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HUMANITARIAN INTERVENTION: PERMISSIBILITY AND OBLIGATION

by

KOK CHOR TAN, B.A.

A thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfilment of
the requirements for the degree of

(Master of Arts)

Department of Philosophy

Carleton University
Ottawa, Ontario

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"HUMANITARIAN INTERVENTION: PERMISSIBILITY AND OBLIGATION"

**submitted by Kok Chor Tan
in partial fulfilment of the requirements for
the degree of Master of Arts**

A handwritten signature in black ink, appearing to read "J. Dwyer", written over a horizontal line.

Thesis Supervisor

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Chair, Department of Philosophy

CARLETON UNIVERSITY

10 May, 1994

ABSTRACT

From the moral point of view, obligation or duty has to presuppose permissibility. No one can be said to have a moral obligation to perform an act X if she is not morally permitted to do X in the first place. But not all morally permissible acts are morally obligatory. With regard to the question of humanitarian intervention, the just war doctrine has been primarily concerned with whether such an intervention is permissible and has said little on whether it can be a moral duty. While many scholars concede that humanitarian intervention is morally permissible, they balk when it comes to deciding whether it is a moral duty. The central question in this thesis then is whether humanitarian intervention can be a moral duty.

ACKNOWLEDGEMENTS

My gratitude goes to Professor Wendy Donner for providing invaluable comments and suggestions on an earlier version of Chapter II. I am genuinely grateful too for her encouragement throughout the writing of this thesis.

Professor John O'Manique's comments on a presentation of a version of Chapter III are much appreciated as are the comments and criticisms provided by the Editorial Board of the Public Affairs Quarterly.

I also thank other members of the Philosophy Department whom I have consulted informally from time to time. With my fellow students, I enjoyed numerous discussions, discussions sometimes sorely in need of moderation, and learned plenty from them.

My greatest debt is to Professor Jay Drydyk. The thesis has benefitted immeasurably, in both content and style, from his scrutiny, suggestions and comments. His enthusiasm and support for the project from its inception to its finish helped make this a most fulfilling enterprise.

While this thesis has benefitted from the above and from others whom I have not credited here, I wish to stress that remaining errors are solely my own.

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CHAPTER I

INTRODUCTION

THE OBJECTIVE

The central question in this thesis is whether intervention to defend human rights, which I shall refer to as humanitarian intervention, can be obligatory. From the moral point of view, obligation or duty (I shall use the two interchangeably in this paper) has to presuppose permissibility. No one can be said to have a moral obligation to perform an act X if she is not morally permitted to do X in the first place. Thus, interventions that are impermissible for whatever reasons cannot be obligatory. On the other hand, permissibility does not entail obligation. One can be morally permitted to do X but still not have a duty to do X. There is thus a conceptual gap between permissibility and obligation; acts that fall in here are permissible but not obligatory.

The questions of duty and permissibility are thus distinct. However, some writers are guilty of conflating permissibility with duty. For example, Fernando Teson points out that Gerard Elfstrom "after arguing for the inexistence of duty to intervene, jumps to the conclusion ... that there is a duty not to intervene."¹ That is, Elfstrom argues that because it cannot be shown that there is a duty to intervene, which is a harder claim to make, it follows

¹ Fernando Teson, Humanitarian Intervention: An Inquiry into Law and Morality (Transnational Publishers, New York 1988), p.73.

there is no right to intervene.² Similarly, one ought not conclude that because intervention is permissible, it is also obligatory. Indeed a different set of difficult questions arises when dealing with the issue of obligation, and by conflating authority with duty one tends to overlook the different set of questions that may respectively arise.

Traditionally, it seems to me, the just war doctrine has been primarily concerned with whether a given intervention is permissible, and little has been said on whether it can be a moral duty. Even the so called "cosmopolitan theorists" are rather reluctant to proclaim intervention as a duty. For example, David Luban writes, "[H]ow strictly this obligation [to intervene] is binding on 'neutrals' is open to dispute."³ This, I suspect (I offer this as a conjecture, nothing more), is because the doctrine is historically concerned with safeguarding state sovereignty and hence with restraining inter-state aggression and intervention. Thus, one operating assumption of the doctrine is that states are normally eager to intervene for political and strategic gains, and hence there is no compelling philosophical need to decide when they ought to. This was not an unreasonable position to adopt during the cold war era, wherein the two rival superpowers (with assistance from their respective allies) were eager to extend their spheres of influence, and thus had political interests in undertaking

² Gerard Elfstrom, "On Dilemmas of Intervention," Ethics 93 (July 1983), pp. 709-725.

³ David Luban, "Just Wars and Human Rights," Philosophy and Public Affairs 9, No 2, p. 175.

"interventionary" activities. There were of course notable exceptions (for example India's intervention in what was then East Pakistan and Tanzania's intervention in Idi Amin's Uganda).⁴ But for the most part, interventions were strategic, and any resulting humanitarian gains were moral bonuses, providing convenient rationalizations to gloss over acts that were motivated primarily by political ambitions. With the end of the cold war rivalry, however, geopolitical and strategic reasons to intervene are no longer as prevalent. States with military capabilities are not always motivated to intervene on altruistic grounds, even in places where human rights abuses are severe. The Western nations' reticence and indifference over the present situation in Bosnia-Herzegovina is a prime example. One could imagine that were the West-East rivalry still in force, an intervention in Bosnia, which in this case would also serve humanitarian ends, by one of the superpowers would have long ago taken place. Therefore, an important question that needs addressing in light of the current international climate is not just when intervention is permissible, but whether it can also be obligatory.

⁴ One may suggest that there were strategic interests at stake here too. This is most likely to be correct. But the point here is that the humanitarian motivations played a major factor and in any case are real rather than made-up. As Donnelly notes: "Mixed motives certainly complicate any ultimate assessment of an intervention. Nonetheless, the label humanitarian seems appropriate to the extent that the intervention is in response to systematic human rights violations or analogous suffering" (p. 614)

DEFINING INTERVENTION

The question of humanitarian intervention is one of the more pressing questions in international relations ethics today. Despite momentous changes in the international arena in the past five years, beginning with the thawing of the cold war and culminating in the international coalition against Iraq in the Gulf War, international relations remain predicated on the sovereignty of nation-states. Indeed, we have witnessed internationally sanctioned interventions -- for example, the United Nations interventions in Northern Iraq and Somalia -- but these challenges to state sovereignty are considered to be aberrations rather than signs of fundamental change in international relations. As Kelly Kate Pease and David Forsythe note:

In the final analysis, while there has been a revolution concerning human rights in terms of legal theory and diplomatic practice, this revolution has yet to substantially undermine the primacy of state sovereignty when it comes to forcible intervention to protect individual rights. Sovereignty as a principle is not immutable and is "no longer sacrosanct" in legal theory. However, most of the currents of the world politics flow against the codification of humanitarian intervention. The north-south divide on this question represents the greatest obstacle...⁵

Similarly, Jack Donnelly points out, "Without attempting to belittle either the political or humanitarian importance of the flood of new humanitarian initiatives over the last five years, I will argue that it would be a mistake to conceive of them as precedents for a new practice of multilateral humanitarian

⁵ Kelly-Kate Pease and David Forsythe, "Humanitarian Intervention and International Law," Austrian Journal of Public and International Law 45, 1993, p. 19.

intervention."⁶The targets of recent interventions are restricted to states that were unanimously (or almost unanimously) considered as "pariah states" by the international community, and these states tend to be small and weak states without influential alliances. Or interventions were confined to circumstances that were considered "extraordinary", like the case of Somalia, where there was no de facto sovereign state to speak of.

Thus the concept of state sovereignty remains a major obstacle to promoting or protecting universal human rights. Efforts to promote or protect human rights transnationally against the wishes of the host state are regarded as violations of state sovereignty. We see how states, when charged with violating the rights of their members, very conveniently invoked the rhetoric of sovereignty to defuse these charges.

The concept of state sovereignty is both embodied and enforced by the internationally accepted Principle of Non-intervention. Article 2(4) of the United Nations Charter, for example, says:

All Members shall refrain in their international relations from the threat or the use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purpose of the United Nations.

The exact term, "The Principle of Non-intervention", is not present in the Charter, and non-intervention could be read to be restricted to military intervention or the threat of military intervention. Restricting interventions to military interventions is, however,

⁶ Jack Donnelly, "Human Rights, Humanitarian Crisis, and Humanitarian Intervention", International Journal XLVIII Autumn 1993, p. 631.

too exclusive a definition of intervention. Interventionary acts need not be restricted to military acts. Direct military intervention⁷ is only one form, an extreme form if you like, of intervention. An economic embargo is also interventionary in that it challenges the internal order of the target state. As R.J. Vincent rightly points out, "to confine the label 'intervention' to activity which uses or threatens force in international relations might fail to capture the reality of dictatorial behaviour in spheres like that of international economic relations."⁸

Thus in 1965, when the United Nations General Assembly adopted a resolution in which the term "The Principle of Non-intervention" formally entered the United Nations lexicon, intervention is explicitly defined to include non-military interference with the domestic matters of a state as well.⁹ Paragraph 2, section A of the resolution notes:

No State may use or encourage the use of economic.

⁷ I am using the conventional distinction between direct military intervention and indirect military intervention. Indirect military intervention involves the supplying of arms, and other military related equipment; it may also involve providing personnel in the form of advisers or technical experts. An example would be US intervention in Nicaragua. Direct military intervention however involves physical deployment of intervening forces and utilising them in combat (or at least likely combat) situations. Direct military intervention is, in short, an engagement in warfare. Examples of this would include the U.S. invasion of Panama, or Cuba's involvement in Angola.

⁸ R.J. Vincent, Nonintervention and International Order (Princeton University Press, Princeton 1974), p.8.

⁹ For an illuminating account of non-intervention and the UN, particularly the historical circumstances surrounding the move from an implicit recognition of non-intervention to an explicit one, see Vincent, pp. 233-277.

political or any other type of measures to coerce [my emphasis] another State in order to obtain from it the subordination of the exercise of its sovereign rights or to secure from it advantages of any kind. Also, no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.¹⁰

Intervention is thus taken to include any systematic and organized coercion of a state by foreign state or states to compel its actions. And such coercive policies can take a variety of forms, from political pressure or economic coercion to direct military intervention. Applying political pressure or economic sanction on a state in order to compel its behaviour is interventionary and prohibited by the non-intervention principle.

In widening the definition of intervention to include more than just armed actions, it is important, though, that the definition is not made too expansive and conceptually uninteresting. International relations among nation-states are interventionary to a degree. States as members of a global economic community or as members of international or regional institutions in a myriad of ways affect and influence one another's domestic policies. But we would not want to call regular interaction between states acts of interventions. The definition would be too weak then to serve any analytical purpose. As pointed out by Donnelly, "to count even diplomatic expressions of concern as 'intervention,' as, for example, numerous governments have done in response to

¹⁰ United Nations General Assembly resolution, "Declaration on Inadmissibility of Intervention in Domestic Affairs of States and Protection of their Independence and Sovereignty", 1965.

international human rights criticism, renders the concept of little interest."¹¹ Thus while some states are notorious for crying intervention at the slightest opportunity (China, for example, calls foreign press criticisms of its human rights record acts of intervention), this seems to me to be a misuse of the term "intervention" and an abuse of the principle as it is internationally recognised.

Intervention cannot, therefore, be restricted to military intervention, nor can it include all acts concerning or affecting a state's domestic affairs. The crucial trait of intervention is the element of coercion. Interventive acts are acts that are coercive rather than acts backed by persuasion or incentive. Coercion, while closely tied with force or the threat of force, is not restricted to the use of threat of force. "An economic embargo in which force is never threatened may have as much coercive force as a naval demonstration or even a limited reprisal bombing."¹² It is, however, difficult to conceptually separate coercive acts from persuasive ones. Rather than being two distinct class of actions, coercion and persuasion lie on a continuum. Thus there can be cases where it is not immediately obvious whether an act is coercive or merely persuasive, that is, whether it is interventionary or not. Is threatening to withdraw favourable trading status interventionary? Is the promise of development aid interventionary? These are difficult questions and perhaps cannot be answered

¹¹ Donnelly, p.609.

¹² Ibid., p. 610.

without looking at the whole picture -- such as the degree of dependency of the target state on the "interfering" state. In other words, there can be no one clear definition of intervention. But while it is difficult to get a precise definition of intervention, there are on the other hand cases that are clearly interventionary or not interventionary. As Donnelly notes, interventionary and non-interventionary acts "lie along a continuum of behaviour that seeks to influence or interfere in the internal affairs of another state...[exactly where one shades into another is unclear] Nonetheless, the ends of the continuum are clear."¹³ Writing to the op-ed section of The New York Times criticising a foreign state's internal injustice is clearly non-interventionary, but positive cross-boundary action to protect human rights against the wishes of the target state is clearly interventionary.

For the sake of focus and consistency, I shall in this thesis consider a particular class of interventionary act, one that is clearly on one extreme end of the continuum, namely military intervention. But my choosing to narrow my discussion to include only military intervention is not just a matter of convenience. The species of intervention of great interest in today's international arena because, perhaps, of the controversy surrounding it and also because of its frequent activation during the past years, is military intervention. The cases of Iraq, Bosnia-Herzegovina and Somalia are just three examples of the increasing attention being paid to military intervention. But its topical interest is not the

¹³ Donnelly, pp. 610-611.

only reason for my choosing to discuss military intervention. The other reason is this. In dealing with military intervention, I shall be dealing with an extreme form of intervention. It is thus a heavier burden to argue why military intervention is permissible or even a duty, compared to arguing for a non-military intervention. The objections against intervention both as a permissible act and an act of duty are strongest when the case at hand is a military intervention. This is obvious, given the costs and the outright intrusion of a military intervention compared to, say, an economic embargo. Military intervention thus serves as a useful paradigm case of intervention. This is not to say that different arguments may not be brought to bear when dealing with non-military intervention, but the central questions regarding intervention are most accentuated in the case of military intervention. Thus by discussing the extreme form of intervention, we are better able to tease out the difficult philosophical problems and issues pertaining to intervention in general.

While an intervention which is aimed at promoting or protecting the human rights of individuals in the target state is humanitarian, interventions need not always be humanitarian. Indeed they are often plainly strategic (e.g., U.S. interventions in Nicaragua and Panama); that is, interventions that aim primarily to enhance or protect the political interests of a state. Such interventions are disguised acts of aggression and cannot be permissible. However, some interventions are permissible. Michael Walzer speaks of three main classes of interventions which could be

permissible:

- 1) interventions to assist a secession or "national liberation"
- 2) interventions to counter other interventions, and
- 3) interventions to combat "terrible" human rights violations, otherwise known as humanitarian interventions.¹⁴

However, I shall not make such distinctions. Interventions to counter interventions or to aid secessionist movements may or may not aim to promote human rights. When they do, I shall count them as "humanitarian." When they do not, I shall not call them "humanitarian." "Humanitarian intervention" as I shall be using it is thus applicable to any intervention (be it to counter-intervention or to assist in a secessionist movement, be it military or non-military) that aims to defend human rights.¹⁵ Also, as it will be argued in Chapter II, human rights violations need not be in the class of state "massacre and enslavement of its own citizens"¹⁶ before a humanitarian intervention is permissible.

¹⁴ Michael Walzer, Just and Unjust Wars (Basic Books, New York 1992), p.90.

¹⁵ By "aiming and serving to defend human rights", I do not mean to restrict humanitarian intervention to interventions that are motivated solely by human rights concern. But human rights protection has to be one of the objectives of a humanitarian intervention; its other objectives could be strategic or political. On the other hand, a humanitarian intervention has to have human rights protection as one of its aims. An intervention which is carried out for purely strategic reasons but, for fortuitous but unforeseen reasons, incidentally benefit human rights will not be counted as humanitarian.

¹⁶ Walzer, "The Moral Standing of States", Philosophy and Public Affairs 9, No. 3, p. 217.

Some may object to my calling humanitarian intervention interventionary. Some international lawyers and international human rights organisations assert that actions aiming to improve the human rights of a people, i.e., humanitarian intervention, ought not be labelled as intervention. The International Committee of the Red Cross suggested, "In terms of the existing right to assistance, humanitarian assistance cannot be regarded as interference [with domestic affairs]. Far from infringing upon the sovereignty of states, humanitarian assistance in armed conflicts, as provided for by international law, is rather, an expression of sovereignty."¹⁷ Others argue that the "reservations about 'humanitarian intervention' can be addressed by reformulating the issue as 'humanitarian solidarity'".¹⁸

But moulding and shaping the definition of humanitarian intervention and sovereignty to suit humanitarian aims only avoid the fundamental philosophical issues. Why should, or rather, why would states part with any degree of their sovereignty? Why should humanitarian intervention be accorded special status? "Moreover," as Chopra and Weiss say, "sleights of hand and redefinitions that include humanitarian intervention would perpetuate the fiction of sovereignty and continue to slow the acceptance of such rapidly

¹⁷ Jarat Chopra and Thomas G. Weiss, "Sovereignty is no Longer Sacrosanct: Codifying Humanitarian Intervention", Ethics and International Affairs 1992 Vol 6, p.108. Of course if the humanitarian assistance is requested by the state concerned, the assistance is not interventionary. But if it is assistance provide against the wishes of the state, and so in a sense it is coerced to accept this assistance, then it is interventionary.

¹⁸ Ibid.

developing concepts as cross-boundary environmental protection."¹⁹ Human rights defenders ought to bite the bullet and concede that what they are doing is interventionary. The task is not to redefine the nature of their actions, but to justify it; that is, to admit that they are infringing the non-intervention clause, but argue why such an infringement is nonetheless morally permissible. This is indeed a more fecund and honest move. We are not merely resorting to debates over choice of terms and definitions but are taking the difficult moral problems head on.

MORAL FRAMEWORK

In this thesis, I shall restrict my discussion to purely altruistic intervention. That is, I am interested in asking whether an intervention that has no humanitarian or strategic consequences for the intervening third state or for the international community (or are perceived to have no such consequence) can be a moral duty. In the case where a gross human rights violation in State 1 is read as a threat to State 2 (e.g., due to influx of refugees, militarization of antagonists, etc.), the moral duty of State 2 to intervene is more obvious or "less open to dispute", as it can be argued that State 2 is responsible for ensuring the peace and security of its members, and insofar as its members are threatened, State 2 has a duty to act, militarily if the use of force is the last resort. It has, in such cases, a duty to intervene by virtue of its special duties to its members. What I am more interested in

¹⁹ Ibid.

here, however, is not so much the duty of a state towards its own members, but its duty towards strangers or foreigners. By restricting the discussion to "purely" altruistic interventions I can focus better on the issue. Moreover, the argument that nothing is to be gained by the intervening state is often presented as an argument for not intervening.²⁰ Thus if it can be shown that purely altruistic interventions can also be obligatory, then "nothing to be gained by us" can no longer be an acceptable excuse for inaction.

The limitation to purely altruistic cases would also exclude intervention on grounds of the intervenor's causal responsibility for the situation in question. My approach, thus, differs from Thomas Pogge's "institutional approach."²¹ Pogge argues that humanitarian intervention is mandatory because of our participation in an unjust global scheme; that is, we are all in a myriad of ways responsible for injustices in other communities and therefore are obliged to correct them. "We are asked to be concerned about human rights violations not simply insofar as they exist at all, but only insofar as they are produced by social institutions in which we are significant participants."²²

²⁰ For example, U.S. Senator Bob Dole argues, "Our military personnel should be asked to risk their lives only in support of U.S. interest" ("Politics and Peacekeeping", The New York Times January 24 1994, A27).

²¹ Thomas Pogge, "An Institutional Approach to Humanitarian Intervention", Public Affairs Quarterly, Vol. 6, Issue 1, January 1992

²² Ibid., p. 93.

Given the real world, the force of Pogge's approach is not be understated. It is indeed true that we have positive duties of justice (which may include the creation of institutions) simply because we are (unwitting or otherwise) perpetrators of injustices. But there are two worries with this argument. First, it restricts our duties to only cases of human rights violations that have (or can be shown to have) resulted from our past or present involvements. The strength of the institutional approach, says Pogge, is that it avoids the controversy of positive duties vis-à-vis human rights. But this strength, it seems to me, is contingent on the availability of empirical evidence demonstrating causal responsibility. It is not always easy to show we are all casually responsible for every human rights violations in the world today. Pogge's institutional approach thus risks getting mired in historical or sociological disputes which may be difficult to solve. Indeed it is popularly (truly or falsely) argued (for example, in the case of Bosnia-Herzegovina) that we should not intervene because we were not responsible for the situation. An account of duty that is independent of an actor's causal responsibility would not be fettered by such empirical disagreements. Second, relying on an institutional approach on the ground that it is better able to account for our human-rights duties understates the force of human rights. If we are sincere about human rights, we ought to recognize that we have corresponding duties vis-à-vis these rights whether or not we are causally responsible for the prevailing institutionalised

violations of these rights.²³

Pogge objects to an interactional approach because an "interactional moral conception postulates certain fundamental principles of ethics. These are ... first-order principles and thus apply directly to the conduct of persons and groups."²⁴ An interactional view has to show, for example, that there is a "positive duty to protect or rescue from enslavement" on the basis of first order moral principle (e.g., rights-based ethics, utilitarianism etc) alone. "Such positive duties," Pogge notes, "have been notoriously controversial."²⁵ The "institutional approach, by contrast, centres around certain fundamental principles of justice, and thus makes primary the reflection on that institutional background itself."²⁶ We are called to act because, as Kant notes,

our social system is so arranged that we take part in the universal and open give and take of business with peculiar profit to ourselves, [therefore] our acts of charity to others should not be regarded as acts of generosity, but as small efforts towards restoring the balance that the general social system has disturbed.²⁷

Thus with regard to positive efforts to protect human rights, the institutional framework implicates third parties in violations of

²³ For a human rights theorist, there can be no duty with regard to human rights only if it is unjust from a human rights perspective to demand such a duty. But more of this later.

²⁴ Ibid., p. 90.

²⁵ Ibid., p. 92.

²⁶ Ibid., p.90.

²⁷ Immanuel Kant, Lectures On Ethics, trans. Louis Infield (Methuen, London 1930), p. 211.

human rights and therefore they are called on to act to remedy their misdeeds.

But it is not necessarily the case that positive duties to protect human rights are hard to prove. Insofar as human rights are universally accepted, even in the form as vague as the Universal Declaration, corresponding duties are implicitly acknowledged. There may be disagreements over the allocation, specification and limits of these duties, but these are strategic questions. Once we have agreed that there are duties corresponding to the rights we have acknowledged, we can organize and mediate these various duties. Thus we need not restrict ourselves to the institutional approach that Pogge is advocating to ground human rights duties; once a human rights framework is in force, an interactional approach can account for duties corresponding to these rights. One need not demonstrate that these rights have been institutionally violated before one can demand positive action.

In a sense, my approach is institutional in that I recognize duties vis-à-vis human rights not because of some metaphysical justification but because human rights is a mutually accepted concept. That is, the internationally recognised concept of human rights provides the institutional basis for these claims. But it is interactional in the sense that duties are demandable not only on grounds that justice is violated but on grounds that human rights demands them. Pogge's institutional approach deals more appropriately with duties of justice (in the Kantian sense) rather than duties of human rights. A human rights framework (even if the

concept of rights is initially institutional rather than interactional) when finally put in force can generate positive duties independent of an agent's participation in prevailing injustices and thus can be enforced within an interactional approach.

Thus, I shall not in this thesis go into any metaphysical account of duties, nor shall I be working from the assumption that there are natural duties independent of us. My starting point is this: given that the international community has accepted the Universal Declaration of Human Rights and other regional declarations on human rights, they have accepted in principle the duties corresponding to these rights. Thus duties, rather than being metaphysical or natural, are voluntarily assented to in that they are recognised by consenting parties. While I refer to Robert Goodin's vulnerability account of duty at crucial points in my thesis, I depart from Goodin in that the vulnerabilities of others matter to us if only because their vulnerabilities directly affect their ability to effectively exercise their human rights, and in as far as we recognize these rights, the vulnerabilities of others thus exert a moral pull on us.²⁸

The Universal Declaration thus can provide a crude idea of what I mean by human rights in this thesis. However, for the purpose of analysis, I refer to the basic rights of Henry Shue. These rights include security rights -- the right not to be subject

²⁸ Robert Goodin, Protecting the Vulnerable (University of Chicago Press, Chicago 1985).

to killing, torture, assault, and so -- and subsistence rights -- the right to water, adequate food, shelter, clothing and the like.²⁹ The Universal Declaration, as we know, contains some rather controversial rights and indeed it does not tell us how to prioritize the many declared human rights should they come into conflict. Basic rights, on the other hand, are less ambiguous and less open to dispute, and thus have greater conceptual application. And while some of the rights of the Declaration may seem trivial to some and hence unreasonable to implement at cost, it is reasonable to assert that basic rights set the minimum standard that any community genuinely concerned with individual well-being should strive to uphold. Moreover, these rights are considered basic in that they are necessary for the realization of other rights. Basic rights provide the essential core, if you like, around which other less basic human rights can be built around or extended. Basic rights are thus basic for these two reasons -- they set the minimum standard for human rights and they are necessary for the realization of other rights.³⁰

The question one may pose to me here is whether, by appealing to seemingly different conceptions of rights for different purposes, I am being inconsistent or arbitrary. The answer is no. The two sets of rights I refer to, the Universal Declaration (and

²⁹ Henry Shue, Basic Rights (Princeton University Press, Princeton 1980), pp. 18-29.

³⁰ I shall take up the matter of basic rights in greater detail in chapter II. For now, I merely wish to draw attention as to which particular conception of human rights I employ in this thesis.

its accompanying Covenants) and Shue's basic rights are not conflicting nor even different conceptions of human rights. Basic rights are subsets within the larger set of rights of the Universal Declaration. Basic rights are indeed some of the very rights enshrined in the Declaration, albeit in more detailed and spelt out form.³¹ Not only are basic rights the foundation of the Declaration, but their realization is necessary for the realization of the rights of the Declaration. Thus, by accepting the Declaration, the international community has assented to, at the very least, the basic rights Shue speaks of. It is perfectly consistent, therefore, to point to the Universal Declaration as evidence that there is an international human rights "culture" (and even to refer to it as a crude idea of what human rights are) and to, at the same time, turn to Shue's basic rights for the purpose of philosophical inquiry.

On the matter of human rights, we need to be clear on the distinction between having a right and exercising a right. John O'Manique notes that "[t]he difference between a just claim or entitlement to something -- the existence of a right -- and actually having that something -- the exercise of the right is obvious and of great importance."³² The concern in this paper then

³¹ For example, the "right to life, liberty and security of person" (Article 3) and the right not to be "subjected to torture" (Article 5) correspond to the security rights Shue speaks of. "Everyone has the right to a standard of living adequate for the health and well-being of himself ... " (Article 25) is on par with the basic right to subsistence.

³² John O'Manique, "Human Rights and Development", Human Rights Quarterly Vol 14, No 1, February 92, p. 86.

is not just with the establishment of the entitlement of rights, but with the exercise of these rights. The question thus is not what to do when states that do not recognize the entitlement of their subjects to human rights, but what to do when they do not allow the exercise of these rights. The former question is superfluous in the framework I am working within as I have taken it that states do recognize the existence of human rights. It is in allowing the effective exercise of these rights that they fail most. Thus when I refer to defending human rights in this thesis, it should be taken to mean defending the exercise of these rights. And when I speak of a right being violated, it should be taken to mean not so much that the entitlement to this right is withdrawn, but more that this right is intentionally rendered inexercisable.

A final point concerning my approach I wish to point out concerns the terms "states" and "nations." I shall use the terms "nations" and "state" interchangeably in this thesis. It is not the case that the distinction between the two is unimportant, but my concern in this paper is with states as they exist, particularly with states as they are represented in international relations, and as they are represented in international and regional organisations. The reason why it bears pointing out that the term "nation" may be used in lieu of state is that some of my references³³ use the terms interchangeably, and so to preserve the integrity of these references and to remain consistent with the

³³ For example, Robert Goodin and John Rawls, just to name two authors.

points they are raising, the two terms will be used synonymously. Of course, whenever I intend to apply "nation" in a specific way, I shall make my intention clear.

THE PROBLEMS

On first blush then, it may appear to some that the discussion of the obligatory nature of humanitarian intervention should end here. If we acknowledge the universality of human rights, then we, if only to be consistent, have to acknowledge the corresponding duties to these rights. Rights do not themselves generate duties, "[t]he exercise of other's rights, nevertheless, does require the exercise of one's duty."³⁴ If we are to take human rights seriously, then we are concerned not just with recognising that people hold these rights, but we ought to be concerned with the effective exercise of these rights. And the effective exercise of a right necessarily entail obligations and duties on the part of others. Minimally, we have the duty to refrain from interfering with the effective exercise of these rights, and more positively we have to promote and assist and defend the effective exercise of these rights. Thus we are indeed duty bound to defend human rights all things being equal. But unfortunately things are not so simple in the real world. There are two immediate problems here.

First, as I mentioned, duty presupposes permissibility. That is, permissibility is a necessary condition for duty. One cannot be said to have a moral duty to do X if the doing of X is not morally

³⁴ O'Manique, p. 92.

permissible in the first place. As far as intervention to defend human rights is concerned, it is not at all obvious that this is permissible. While most states in the world are signatories to the Universal Declaration and various other regional agreements on human rights, international relations also operate on the basis of non-interference in affairs of states. There is thus a dilemma here -- the duty to promote and protect the exercise of universal human rights on one hand, and the recognition of state sovereignty on the other. This dilemma is one of a conflict of duties. Humanitarian intervention violates the duty not to violate state sovereignty. Which principle should rule? Why is the non-intervention principle given primacy?

Chapter II will deal with "The Principle of Non-intervention". I shall examine the moral basis of this principle and argue that universal non-intervention is untenable. If there is a negative duty not to intervene, it is only because in the end human rights matter. Thus, in as far as not intervening is contradictory to greater exercise of human rights, the intervention is permissible. The authors and arguments in this chapter will be familiar to most readers. The purpose of this chapter, then, is not so much to present new arguments as to survey the literature, to make clear my own position with regard to the issue and, more importantly, to lay out the groundwork for Chapter III which deals with the second problem.

The second problem is this: while permissibility is a necessary precondition for duty, it is by itself not a sufficient

one. One may be morally permitted to do X, but not be morally obliged to do X. We can readily think of examples here. But human rights, if they are to be effectively exercised, demand corresponding positive duties. Thus, if it is necessary to take up arms to defend the exercise of these rights, then we have a duty to do so. But here lies a problem -- the traditional way duties are ranked. As Goodin points out, it is commonly regarded that special positive duties are prior to general positive duties. That is, our priorities are foremost to our own (i.e., those to whom we share a common history, political community, etc.).³⁵ Our positive duties to others, being general duties, must be content to take second place to our duties to compatriots. Like Goodin, I take this to be a mistaken view, and Chapter III, in arguing why humanitarian intervention can sometimes be a duty challenges this traditional ranking of duties.

Assuming that my argument that there can be a duty to intervene is correct, Chapter IV examines whether the international community has thereby the moral duty to establish an international humanitarian defense force. In his 1992 annual report, An Agenda For Peace, the Secretary General of the United Nations writes: "the ready availability of armed forces on call could serve, in itself, as a means of deterring breaches of peace since a potential aggressor would know that the [Security] Council had at its

³⁵ Goodin, Chapter 2.

disposal a means of response."³⁶ Likewise, former Undersecretary-General of the United Nations Brian Urquhart has argued that there "the need for a highly trained international volunteer force, willing, if necessary, to fight hard to break the cycle of violence at an early stage in low level but dangerous conflicts."³⁷

Creating a permanent defense force would serve to institutionalise humanitarian intervention by establishing a prior arrangement and operating procedure and by assigning agency. As John Rawls notes: "By an institution I shall understand a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like."³⁸ A permanent humanitarian defense force would have a prior operating procedure, regulated by rules of intervention and be staffed by individuals whose roles and duties are unambiguous.

While some may argue that in the absence of institutions some duties, namely imperfect duties, cannot be demanded,³⁹ I shall argue that it is rather the other way around -- that we recognize that there are duties and therefore we create institutions to perform these duties. But while we recognize that the creation of

³⁶ Boutros Boutros-Ghali, "An Agenda For Peace," United Nations Document S/24111, 17 June 1992, p. 13.

³⁷ "For a UN Volunteer Military Force," The New York Review of Books June 10, 1993, p. 3.

³⁸ John Rawls, A Theory of Justice (Harvard University Press, Cambridge 1971), p. 55.

³⁹ See, for example, Onora O'Neill, Constructions of Reason: Explorations of Kant's Practical Philosophy (Cambridge University Press, Cambridge 1989), especially pp. 197-200.

institutions follows from the demands of duties, it not at all self-evident if the creation of institutions is itself a duty.

There are two arguments why the creation of an international institution to defend human rights universally is morally required. First, if one has a duty to do X, then one's efficiency in performing X carries moral weight, particularly when expedition and urgency do make a difference whether X is successfully carried out or not. Thus, in as far as an institutional arrangement increases the efficiency of the performance of recognised duties, there is a good reason why such an institutional arrangement should be sought.

As Shue notes:

Efficiency is at least as great a value in the fulfillment of rights ... The more restricted are individual duties -- that is, the less time, energy, money, and so forth each is bound to invest in the fulfillment of rights of others -- the more vital it is that whatever is invested in right fulfillment must be used efficiently for that purpose.⁴⁰

Not only is the efficiency of an intervention important but the expedition of an intervention matters as well. An early preemptive intervention is generally less costly and has a better chance of success than a tardy one. The existence of an international force, ready to intervene in a moment's notice is certainly more effective than one which is at the mercy of ad hoc cooperative schemes.

The other argument is this: A permanent arrangement for intervention allows for the assigning of agency and duty. As Rawls

⁴⁰ Henry Shue, "Mediating Duties", Ethics 98 (July 1988), p.697.

points out, "A person taking part in an institution knows what the rules demand of him and of the others."⁴¹ A permanent international humanitarian defense force provides a mechanism by which individual can voluntarily take on the responsibility of defending human rights. It is true that there are states with professional armies, but the responsibilities of these soldiers to foreigners is open to dispute. They may have consented to risk life and limb for their society, but it is not at all obvious if they consented to risk life and limb for others. An international humanitarian defense force staffed by volunteers who have explicitly consented to defend human rights of all would avoid this possible and serious worry.

Consent is, of course, not necessarily a decisive moral factor; one can be demanded to do a moral duty even if one does not consent. But in the case of intervention, consent is crucial, not because without consent there can never be a duty to intervene (as I shall argue in Chapter III, extreme cases exert moral demands on us even if the sacrifices are high), but because consent lowers the threshold for obligatory intervention. With consenting agents prepared to carry out high risk interventionary acts, intervention can be morally demanded even when human rights abuses are not too extraordinary. Early intervention in crises wherein human rights abuses are not yet extraordinary can therefore be dutifully carried out.

Before beginning, it is worthwhile pointing out that intervention is not to be considered the solution to human rights

⁴¹ Rawls, p.56.

abuses. At best intervention treats symptoms of greater global injustices. The more fundamental problems, the root causes of human rights violations, must certainly be dealt with as well. The current global economic injustices, ongoing covert military interventions by big powers in weaker states cause, directly or indirectly, gross human rights violations. But while intervention does not address the cause of greater global injustices, it is nevertheless necessary (if just and justly executed) for addressing immediate and urgent moral concerns. Medicines, bitter as they are, must sometimes be taken if only to ease the symptoms. Moreover, my concentration on military intervention should not detract from the contribution of non-military interventions. Humanitarian intervention by means of food relief, medical support, media pressure etc are tools human rights defender ought to apply as well. Indeed it is essential to note that military intervention ought to be a last resort. As Weiss sums it up:

This is not a call to eliminate cutbacks by retooling militaries to take on international roles that should be played by bona fide humanitarian organisations ... There will be clear need, however, for more intervention to ensure human rights, tasks that are often conducted best by soldiers in the most chaotic and dangerous of circumstances.⁴²

⁴² Thomas G. Weiss, "Whither Intervention: The UN and the Use of Force", Washington Quarter Vol 17, No. 1, Winter 1994, p. 120.

CHAPTER II

THE MORAL BASIS OF THE PRINCIPLE OF NON-INTERVENTION

As noted in the previous chapter, cross-boundary actions without the consent of the target state to protect or promote human rights are generally ruled out by the non-intervention principle. There are loopholes around this obstacle, of course. The non-intervention principle does not apply when a situation within a state is perceived as a threat to regional or international peace and security. Article 42, Chapter VII of the United Nations Charter states that the Security Council may authorise intervention if it determines that there is a threat to international peace and security. Threats to international peace and security need not be restricted to outright interstate aggression (for example, as in the case of the Iraqi invasion of Kuwait), but also include matters originating within the borders of a state if these matters pose a threat to other states as well. That is, if events within state are seen to have an effect beyond the confines of its borders, then international action against it is exempted from the non-intervention principle. For example, the United Nations intervention in Somalia in 1992 is formally justified mainly by the claim that the events in Somalia "constitute a threat to international peace and security [my emphasis]."¹

This seems to me to be a reasonable exception to the non-

¹ United Nations Security Council draft resolution, United Nations Document S/24880, 3 Dec 1992.

intervention rule, for it can be argued in such cases that outside interferences are only superficially interventionary. While domestic events spill beyond the confines of a state's border and have regional or international consequences, they cannot strictly be said to be domestic. Thus, outside involvement in such cases is not involvement with domestic affairs, but with affairs that matter to the other states as well, and therefore not interventionary but, perhaps, actions of self-defense. But while it cannot be shown or, simply cannot be agreed by an international body, that a case of gross human rights violation within a state has regional or international repercussions, outside involvement to counter the violation is counted as interference with the domestic affairs of a state and is therefore precluded by the non-intervention principle. The current formal and legal standing of this principle therefore places a heavy burden of proof on those who wish to defend human rights. Citing human rights violations is not sufficient to bypass the non-intervention principle; it must be shown that the peace and security of the region or international community are at stake as well. Not only is it often difficult to convince the international community that a gross human rights situation threatens regional or international peace and security, but there are also instances of human rights violations that do not pose any threat beyond the borders of the states concerned.

Thus relying on the "threat to international security" clause is no solution. But Howard Adelman argues that this loophole provided by Chapter VII of the United Nations Charter is all that

is required for human rights defenders. He says that humanitarian intervention should not be "invoked just because human rights have been violated, even in a massive way."² Adelman wants to preserve the non-intervention principle: "A state loses its legitimate right to be respected only when it threatens the peace and security of its neighbours, even if the only real threat comes from the failures of the state in exercising its domestic responsibilities."³ Thus intervention, for Adelman, is restricted to cases of "mass flight of inhabitants attempting to cross international borders."⁴ And as intervention in such cases is already provided for in international law (e.g., by Chapter VII of the UN Charter), there is no need for any reassessment of the non-intervention principle.

However, Adelman's proposal restricts intervention only to the most extreme of cases, and to a particular kind of extreme case at that, namely that which has resulted in a mass exodus of people. But a human rights violation within a state may well pass the point of toleration before it begins to affect its neighbours. If human rights are to be taken seriously, the international community should not be restrained from acting until the rights violations have reached such proportions. In fact, waiting until there is evidence of "mass flight" or exodus of people before acting is

² Howard Adelman, "The Ethics of Humanitarian Intervention: The Case of the Kurdish Refugees," Public Affairs Quarterly Vol 6, Issue 1, January 1992, p. 75.

³ Ibid.

⁴ Ibid., p. 85.

strategically questionable. I wonder if a human rights violation which is allowed to become drastic enough to trigger mass migration, and made more complex by it, would not be very difficult to resolve in practice. Tardy international intervention in the case of Bosnia-Herzegovina is partly to be blamed for the present moral and political quagmire there.

Moreover, it is not obvious if all "gross" human rights violations would necessarily come to affect or pose a threat to others. Unspeakable atrocities being committed in relatively isolated regions of the world today (for example, in East Timor and Tibet, to name just a couple of cases) have minimal consequences to the overall peace and security of the world, but these violations are not acceptable nonetheless and cry out for greater foreign involvement (even if it is only, as in the case of East Timor, to make up for previous unjust foreign interference). We need to ask, thus, if it is permissible to use force on humanitarian grounds even in situations where there are no perceived threats to international peace and security.

The urgent issue thus is not simply one of legal or political strategy, that is, how the non-intervention principle as it is currently enforced can be exposed to have built-in checks and balances for human rights enforcement. Such a move misses the more fundamental philosophical question. We should examine the moral basis of this principle. What is the moral foundation of this principle that should allow it to come in between those whose rights are being violated and the duties of the international

community vis-à-vis these rights? I shall argue that the common moral arguments supporting the non-intervention principle do not support universal and absolute non-intervention. In assessing the moral foundation of this principle, we shall be able to tease out conditions under which intervention is permissible.

Broadly, there are two (not mutually exclusive) classes of moral arguments for the principle of non-intervention.⁵ One class comprises arguments that non-intervention ensures international peace, security and order (I shall call this the consequentialist position); the other includes arguments that states are entitled to rights of sovereignty and self-determination, and the non-intervention principle derives from these rights (I shall title this the position from sovereignty).

INTERVENTION AND CONSEQUENCE

Let me look first at the consequentialist position. This says that the principle of non-intervention ensures a habitable world. Michael Walzer writes that state boundaries may be badly or arbitrarily drawn, but "[the] rights of member states must be vindicated, for it is only by virtue of those rights that there is a society at all. If they cannot be upheld (at least sometimes), international society collapses into a state of war or is

⁵ See for instance Charles Beitz, "Reagan Doctrine in Nicaragua," Problems of International Justice, Steven Luper-Foy, ed. (Westview Press, Boulder 1988) pp. 182-195.

transformed into a universal tyranny."⁶ Thus an international society with no regard for the sovereignty and autonomy of states risks disintegrating into a Hobbesian international state of nature, one that is "nasty, brutish, and short"; it would be no society at all.

The consequentialist argument seems applicable only to a particular kind of intervention -- military intervention. In fact, this is exactly what Walzer has in mind. It would be difficult for the consequentialist to deny humanitarian interventions that are non-military in nature, for such interventions are rarely destabilising. There are indeed many ways the international community or third parties can pressure a regime to improve its human rights record without resorting to arms -- by imposing economic sanctions or aid withdrawal, by diplomatic isolation, by mounting unfavourable international opinion against the regime concerned, and so on⁷. However, one may suggest that intervention, military or not, has destabilising potential, that it upsets regional economy for example, or that it may escalate into a confrontation. If intervention does not directly upset international order, it at least "sours" it. I find these claims empirically unfounded; but I shall not press this point here. I shall argue in my second point below that even if intervention is

⁶ Michael Walzer, Just and Unjust Wars (Basic Books, New York 1992), p. 59. Although there are signs of a consequentialist argument in Walzer, his position is more strongly deontological as we shall see.

⁷ Note, for example, the non-military intervention in South Africa, which has produced results.

destabilising, this in itself is no reason to reject it. My concern here is, after all, with military intervention, and, to be charitable, I shall grant that there is some truth to the claim that a military intervention can have destabilising consequences.

Thus, I shall contend that the consequentialist argument does not work against military intervention either. There are two points I want to make here. First, it is not necessarily the case that all military interventions are destabilising. It is true that military intervention can have profound effects in the region concerned and even internationally. On the other hand, there are historical examples of military interventions that have no regional repercussion or escalation. For example, the US led intervention in Somalia has resulted in little escalation, regional or international.⁸ However, and this takes me to the second point, even if an intervention were to be destabilising, this is not enough to rule out intervention. As much as international stability matters, it is but another factor in our moral calculus. There is no a priori reason why international stability should be the primary moral consideration. International stability is not wanted for its own sake, but for the worth it has to individual human beings. As Charles Beitz notes: "[F]rom the moral point of view, many things matter. The things that matter include peace and stability ... [but] they also include human rights and social

⁸ Of course the initial success of the humanitarian intervention is now tainted by misdirected and unfocused policies. But most of us would agree that the original purpose of the intervention was right, and was indeed quite successful with little negative consequences.

justice."⁹ Thus an intervention that may be destabilising cannot be rejected without considering the objectives of the intervention. The number of lives it aims to rescue and the social justice it aims to restore may outweigh the risk of escalation. There is no a priori reason why consequentialism should restrict itself to maximising international peace and stability while neglecting human rights and social justice.

In Rethinking Democracy, Carol Gould argues against military intervention on grounds that it costs lives, particularly innocent lives. She writes that "military intervention may be said to violate the right of life [including of innocents] ... This right is a basic human right ... and thus has priority over other rights."¹⁰ Gould raises a genuine concern. Nonetheless, as with stability, the cost to human lives of the intervention has to be weighed against the worth of the end. While it is true that military action inevitably costs human lives, it may be the case that the result (e.g., the number of lives to be saved) outweighs the cost of the intervention. If we were to take the right to life to be primary and inviolable, there could not be any just wars. Yet it is difficult to deny that just wars are possible, and have indeed been fought. Take for instance World War II, which had a heavy toll on lives of both combatants and innocents. As Fernando Teson notes, "[A] Justification of that War can only rest on the

⁹ Beitz, p. 188.

¹⁰ Carol Gould, Rethinking Democracy (Cambridge University Press, Cambridge 1988), p. 322.

assumption that protecting innocents is a moral concern, but not the only moral concern."¹¹ He adds, "Rights are sometimes worth fighting for, even if we, or other innocent persons, succumb in the process."¹² Gould's argument ought not be that military intervention is never permissible, but that a just military intervention must meet the last resort criterion and be exercised with responsibility. As with any just violent measure, the principle of proportionality must come into play. If lives are sacrificed out of necessity and within proportion for the liberation of a community, Gould might be wiser to accept such sacrifice as the choice of lesser-evil from the options imposed on us by the real world.

David Luban in his article "Just Wars and Human Rights" argues that a war is just if it protects or prevents the violations of more "socially basic rights" than the war itself violates.¹³ Richard Wasserstrom suggests more explicitly:

"if individual rights are the touchstone, then a 'utilitarianism of rights' -- determination of whether the net enjoyment of those rights would be increased by intervention -- appears to be one strong theoretical formulation by which to determine whether or not the initiation of war is a crime."¹⁴

¹¹ Fernando Teson, Humanitarian Intervention (Transnational Publishers, New York 1988), p. 98.

¹² Ibid., p. 101.

¹³ David Luban, "Just Wars and Human Rights," Philosophy and Public Affairs 9, No. 2 (1988), pp. 160-181.

¹⁴ Richard Wasserstrom, "Book Review: Just and Unjust Wars," Harvard Law Review 544 (1978), p. 544.

Some human rights can be traded-off for rights of others if the principle of proportionality is met, that is, if more rights can be enjoyed by sacrificing some. So, if more lives are to be rescued than killed in an intervention, the intervention is just.

One may object vehemently at this point: If we take human rights seriously, we cannot sacrifice some to save many; some rights, particularly the right to life, are inalienable and cannot be traded-off. But this objection reveals a general weakness of moral philosophy -- the assumption that there can such a unified moral theory for all times and cases. This misconception has resulted in our extreme inflexibility and absoluteness when making moral decisions or when passing moral judgements. We need to acknowledge that every moral principle has its limiting point: at a certain level (say involving small numbers) rights consideration is most appealing, but we can imagine cases involving large numbers where rights talk begins to seem counter-intuitive and an appeal to utility makes better moral sense. Donnelly, a firm advocate of human rights, admits, "Extraordinary circumstances do force us to admit that at some point, however rare, the force of utility builds up until quantity is transformed into quality."¹⁵ To adhere rigidly to the absoluteness of individual rights is to accept a world in which our moral talk becomes cynical. We would have to accept a world wherein we would allow some people to be violently oppressed simply because attempting to rescue them would endanger others. We

¹⁵ Jack Donnelly, The Concept of Human Rights (Croom Helm, London 1985) p. 58.

risk damaging the credibility of our moral-language. It is a moral point of view which cannot be upheld by compassionate people. The price of being moral is made unreasonably high by being so rigid about rights.¹⁶ As Rawls notes, when adopting principles, we need also to consider the strains of commitment. We should not accept principles whose consequences we cannot accept, or principles that can be adhered to with only great difficulty.¹⁷ Moral principles are after all accepted or rejected depending on how they measure against our psychological acceptance and moral intuitions, that is, our moral principles have to be in wide reflective equilibrium with our considered moral intuitions. To accord to human rights only quantitative worth and never any qualitative worth is a moral point of view which cannot prevail. As Walzer himself notes, with regard to the killings of innocents in times of just wars, "[w]e might better say that it is possible to live in a world where individuals are sometimes murdered, but a world where entire peoples are enslaved or massacred is literally unbearable."¹⁸

Thus to argue that non-intervention is necessary to safeguard international stability is unconvincing, not just because intervention does not necessarily lead to destabilisation nor escalation, but also because this argument ignores other moral

¹⁶ This was suggested to me by Jay Drydyk.

¹⁷ John Rawls, A Theory of Justice (Harvard University Press, Cambridge 1971), p. 176.

¹⁸ Walzer, p. 254. It needs to be pointed out that Walzer is not arguing in favour of intervention here, but providing a justification for the killing of innocent civilians in times of a just war.

considerations. A true consequentialist approach to international ethics has to reckon not only with international stability and innocent lives but also with human rights and social justice in the long term.

THE SOVEREIGNTY OF STATES

Let me turn now to the position from the sovereignty of states. Arguments of this class reject intervention not because of its consequences, but as a matter of principle. States have claims to rights of sovereignty, and intervention is impermissible precisely because it violates these rights. One argument from this position draws directly on the individual/state analogy. John Stuart Mill argues in On Liberty, that a person is entitled to non-interference from others because she is in a better position than anyone else to determine her own interests. Although individuals might be wrong occasionally, the consequences of allowing interference outweigh any potential benefit of coerced "right" choice for this violates their "means toward their mental development."¹⁹ He writes that "all errors which [the individual] is likely to commit against advice and warning are far outweighed by the evil of allowing others to constrain him to what they deem his good."²⁰ In the international arena, states are like individuals, so the argument goes. For example, Alan James says

¹⁹ John Stuart Mill, On Liberty (Bobbs-Merrill, Indianapolis 1976) p. 133.

²⁰ Ibid., p. 93.

that states are unitary moral agents, entitled to the same liberty as persons -- the right to self-determination, and the right to non-intervention "because that is how states proceed in their relations with each other ... the language of diplomacy and international law is couched in terms of unitary actorhood."²¹ Thus the argument for individual liberty applies to states as well.

But the claim that the state is a unitary actor is flawed. Many philosophical difficulties arise when adopting the state as a person-like moral agent. While we may have some (at least vague) notion of what a free and self-determining person is (in the moral sense), the notion of a free and self-determining state is elusive. Questions like who is the bearer of this self-determination, and by what virtue is she the bearer have very different answers when asked of individuals than of states. The reasons why individuals enjoy such rights may not apply to states at all. For instance, we say individuals have rights to self-determination because they are autonomous rational moral agents. States, however, are neither rational moral agents nor are they autonomous in the same way. The state is but an association of individuals; it is a representative of the people. Only the people it represents are autonomous moral agents, and only they can pursue rational ends and only they are worthy of liberty and freedom. The state, while it is an association, does not have such ends of its own. It is the ends of individual agents that ultimately matter, that the state ought to

²¹ Alan James, "The realism of Realism: the state and the study of International Relations", Review of International Studies 15 (1989), p. 220

represent. States are not "people" themselves, but rather the agents of people. Regarding the state as a moral agent and not a representative of moral agents accords to it a metaphysical status, and this is very difficult to prove.

Moreover, even if we did treat states as person-like moral agents, it is not at all clear why this should unconditionally preclude intervention. In domestic morality, we seem to agree that interference with individual desire is permissible (or even a duty) if it can be shown that the individual agent is incompetent or not fully rational. As Wendy Donner notes, Mill's doctrine of liberty is consistent with paternalistic interference in cases of children²². Mill writes, "This doctrine [the principle of liberty] is meant to apply only to human beings in the maturity of their faculties ..."²³ Thus, a fair application of the individual/state analogy has to allow intervention in cases where a state is judged to be "incompetent". How to gauge a state's "competency" is of course not easy, but it is not unreasonable to say that if a state acts in a manner that is contradictory to the wishes of its composite parts (i.e., its members), then it is behaving "incompetently". In any case, the point here is that treating states like individuals (assuming that we could do such a thing) does not immediately rule out interference and intervention. Thus transgressing the rights of a state that infringes the rights of

²² Wendy Donner, The Liberal Self (Cornell University Press, Ithaca 1991) pp. 160ff.

²³ Ibid., p. 169.

its people is no violation at all -- it is simply doing what the state ought to be doing in the first place.

But it could be pointed out that the individual-state analogy could concede that states are not like individual moral agents in every aspect, but states, like individuals, represent themselves best. S.I. Benn and R.S. Peters, although admitting that the analogy between states and individuals is only suggestive, note nonetheless that "it is doubtful how far any state would be justified in deciding what was best for other peoples."²⁴ Relying on Mill's account of the competent agent, they write that "duty of non-intervention rests on this assumption, that the claims of a state's members will generally be better served if they are left to work out their own salvation."²⁵ Let us thus turn to Mill's explicit argument on international non-intervention.

MILL ON NON-INTERVENTION

In his essay "A Few Words On Non-Intervention,"²⁶ Mill defends non-intervention not because he regards states as individual moral agents, but out of respect for the self-determination of a people²⁷. States have claims to certain rights not because they are

²⁴ S.I. Benn and R.S. Peters, The Principles of Political Thought (Free Press, New York, 3rd ed. 1968), p. 429.

²⁵ Ibid., p. 431.

²⁶ Mill, "A Few Words on Non-intervention," Dissertations and Discussions Vol III (Longmans, London, 2nd ed. 1867), pp. 153-178.

²⁷ Mill takes the non-intervention principle to be applicable only among "civilised" peoples. "[B]arbarians," he says, "have no rights as a nation" (p. 168). This is certainly an untenable claim,

person-like actors, but because these rights derive from the collective rights of their members to self-determination. There are only two instances wherein intervention is permissible -- in a case of a protracted war between two equally matched sides, and in the case of counter-intervention, that is, intervention to enforce non-intervention. However, he gives no room in his account for humanitarian intervention. He says:

With respect to the question, whether one country is justified in helping the people of another in a struggle against their government for free institution ... [w]hen the contest is only with native rulers ... the legitimacy of intervention is, as a general rule, No.²⁸

Humanitarian intervention for Mill contradicts self-determination of a people. Even if the intervention is well-intended and actually rescues them from a dictatorship, he argues that it impedes the self-determination of a people because

[t]he only test possessing any real value, of a people's having become fit for popular institution is that they or a sufficient portion of them to prevail in the contest, are willing to brave labour and danger for their liberation.²⁹

The virtues of liberty and freedom cannot be learned in slavery, he admits, but he contends that efforts from outside to "liberate" an oppressed people necessarily fails: "unless the spirit of liberty is strong in a people" liberation from without will turn into

but I need not take him to task here. I shall, not unreasonably, assume that there are no barbaric peoples today and take the non-intervention rule as applicable to peoples.

²⁸ Ibid., p. 173.

²⁹ Ibid., p. 173.

despotism in time³⁰. Liberty cannot be imposed; it has to be fought for and won. It is a value to be cultivated and inculcated: "it is during an arduous struggle [against the oppressive regime] to become free by their own efforts that these feelings, and virtues [for liberty] have the best chance of springing up."³¹

It seems to me that Mill is not asserting the virtues of self-determination of a state over individual rights here. His claim is more empirical³² -- given what self-determination is, intervention to impose it necessarily fails. In other words, non-intervention is a necessary condition for the enjoyment of the collective human rights to self-determination. However, this claim is clearly unfounded now (if it was ever correct in Mill's time). History has shown many instances wherein the liberty and self-determination rights of political communities were obtained with outside intervention. Take, for example, Tanzania's involvement in Uganda or the present situation in Somalia. Interventions in these cases have served to promote self-determination rather than to oppose it. On the contrary, non-intervention has perpetuated the lack of self-determination in some parts of the world. For example, international inaction with regard to Indonesia's atrocities in

³⁰ Ibid., p. 175.

³¹ Ibid.

³² Some commentators, for example Teson, may argue that Mill is making a normative claim as well, that is, self-determination of the state is morally prior to individual rights (Teson, p. 31). I admit that this is not inconsistent with Mill's essay, but more of that later.

East Timor contributes to the suppression of the East Timorese rather than to the promotion of their self-determination.

To be fair, it can be said that Mill's assumption was that a government can never maintain power without the consent of its subjects. Any people, if they want to rid themselves of a tyrant ruler, can do so without outside involvement. If a dictatorship stays despite the efforts of the people to repel it, it has to be only because the regime is receiving outside assistance (in which case intervention, while it is counter-intervention, to help the revolt is permitted). But is this point true? It is certainly not the case today (if indeed it was ever the case) that tyrants can never maintain power without the masses' consent. Take the case of South Africa. The regime has maintained itself with very little outside assistance. One surely cannot argue that the South Africans are not trying sufficiently hard enough to depose the Pretoria Regime. Moreover, neither does Mill's account cover cases wherein minorities are treated unjustly, or are persecuted. A state apparatus can easily suppress minority disenchantment with no foreign help (e.g., the Kurdish minorities in Iraq).

Mill's other worry is that a people may not be ready for liberty and freedom. This is, if taken too literally, a very cynical view of liberty and freedom. People need not be "ready" before they know they do not want to be imprisoned without trial, to be actively deprived of their basic rights, to be exploited or repressed. It is fair to say that some societies may not be ready (culturally or economically) for particular forms of political

institutions (e.g., parliamentary democracy), but is quite another thing to say that they thus are not entitled to fundamental moral rights, and to liberty, broadly conceived. Interventions that aim to impose an alien political structure may be objectionable and unsuccessful in cases where intervention aiming to merely redress injustices or to restore rights may be unobjectionable and successful.

It may be argued at this point that human rights are best exercised or realized only under certain kinds of political institutions (e.g., liberal democratic institutions), and thus promoting human rights necessarily entails implementing such institutions. The inference, however, does not follow. While some political institutions may allow more extensive exercise of human rights, it does not follow that these are the only institutions compatible with any exercise of human rights. Rawls in a recent essay points out that "the basic rights as we have described them can be protected in a well-ordered hierarchical [but nonliberal] state with its consultation hierarchy."³³ With regard to the freedom of expression for example, Rawls notes that:

With a consultation hierarchy there is an opportunity for different voices to be heard, not to be sure, in a way allowed by democratic institutions, but appropriately in view of the religious and philosophical values of the society in question. Thus, individuals do not have the right of free speech as in a liberal society; but as members of associations and corporate bodies they have a right at some point in the process of consultation to express political dissent and the government has to take

³³ Rawls, "The Law of Peoples," On Human Rights: The Oxford Amnesty Lectures 1993, eds. Stephen Shute and Susan Hurley (Basic Books, New York 1993), p. 70.

their dissent seriously and to give a conscientious reply.³⁴

Thus there is no reason to rule out humanitarian intervention on grounds that it imposes foreign political structures that are incompatible with local "readiness". Basic human rights can be reasonably exercised within the context of local politics and "readiness".

THE COMMUNAL INTEGRITY OF STATES

Mill's presentation in his essay can be given a communitarian twist if read as a normative rather than as an empirical claim. Walzer's revival of Mill's essay does just that. Walzer argues that not only is non-intervention a necessary condition for self-determination of a community, but that self-determination precedes the rights of individuals. In other word, the rights of a community are prior to the rights of an individual and intervention, even if it aims to improve human rights, is wrong because it violates this more fundamental right. Communitarians claim that the community is morally prior to individual rights because, they say, it is only within a communal context that individual rights make sense. Rights discourse has meaning only within concrete socioeconomic realities that are found in domestic societies. Freedom without reference to a communal setting is meaningless; freedom has to be situated in a historical and social context. Thus communitarians hold that the liberal idea of an impartial, societally-independent morality is

³⁴ Ibid., p. 62.

based on the false premise of the unencumbered self. The self does not exist in a cultural vacuum, but is shaped by its social and historical forces. We cannot conceive our personhoods without reference to our roles as citizens and as participants in a common life. Our individual self-determination and self-actualization can be realised only with given social roles and within a social setting. Alasdair MacIntyre points out that "[t]he individual search for her good is generally and characteristically conducted within a context defined by those traditions of which the individual's life is a part"³⁵

While some communitarians do not commit themselves to equating the political community with the nation state, others do.³⁶ Walzer writes that the state is the only boundary a community can ever have³⁷ and is "the arena within which self-determination is worked out and from which therefore foreign armies have to be excluded."³⁸ For Walzer, the state protects and defines a common life and purpose, and a shared conception of the good for its members. Intervention is impermissible as a general rule because it undermines the political and social fabric essential for placing individual rights -- "Against foreigners, individuals have a right

³⁵ Alasdair MacIntyre, After Virtue: A Study in Moral Theory (Duckworth, London 1981), p. 207.

³⁶ See Walzer's Just and Unjust Wars (1992), particularly Chapters 4 and 6; and "The Moral Standing of States: A Response to Four Critics," Philosophy and Public Affairs 9, No. 3 (1980), pp. 209-229.

³⁷ Walzer, 1992, p. 90.

³⁸ Walzer, 1980, p. 210.

to a state of their own. Against state officials, they have a right to political and civil liberty. Without the first of these rights, the second is meaningless: as individuals need a home, so rights require a location."³⁹ Foreign actions to protect human rights, even if well intended, are self-defeating because "[r]ights are only enforceable within political communities where they have been collectively recognised, and the process by which they come to be recognised is a political process which requires a political arena."⁴⁰ Foreigners, ignorant of the shared understandings of a community and outside of its "political arena", are in no position to pass or enact moral judgements within it. As Walzer summarises:

The state is constituted by the union of people and government, and it is the state that claims against all other states the twin rights of territorial integrity and political sovereignty. Foreigners are not in a position to deny the reality of that union, or rather, they are in no position to attempt anything more than speculative denials. They don't know enough about its history, and they have no direct experience, and can form no concrete judgments, of the conflicts and harmonies, the historical choices and cultural affinities, the loyalties and resentments, that underlie it.⁴¹

What can we make of the state communitarian argument for non-intervention⁴²? The most obvious flaw is the claim that states are

³⁹ Ibid., p. 228.

⁴⁰ Ibid., p. 226.

⁴¹ Ibid., p. 212.

⁴² To be fair, I should point out that Walzer allows for humanitarian intervention, but only in cases where the "fit" between the state and its people is radically missing (see p. 214 of "Moral Standing of States"). That is, he restricts just interventions only to cases wherein human rights violations are genocidal (see p. 90 of Just and Unjust Wars). The quarrel cosmopolitan theorists (e.g., Beitz, Luban and Wasserstrom) have

the only political communities people have. This is certainly untrue; the majority of states today are multi-ethnic or multicultural, comprising of different communities with competing political visions and agendas. For instance, Anthony Black writes, "The lesson of communitarianism for international order is, then, that groups other than nations (cities, firms, churches, pressure groups, etc.) have no less a strong a claiming principle, to stand as the building blocks of confederations and international law."⁴³ But let me not engage in a sociological debate here. A philosophical critique of state communitarianism, as we shall see, will be devastating enough.

Is it correct to give precedence to the rights of states and relegate individual rights to the moral background? It may be true that the rights of individuals need a social and political context to have meaning. But why should this context end at the state borders, or even community borders? After all, does the "supercommunity" of humanity not constitute, at least conceptually, a community as well? If so, is there not at least conceptual space to speak of global or universal rights? Our initial moral

with him thus is that he places the burden of proof on human rights defenders, whereas the cosmopolitans would prefer that the burden of proof be on states to meet some criteria of legitimacy before they can appeal to the non-intervention principle. As Wasserstrom notes of Walzer's position: "We require a more complete argument as to why we should value so highly the mere existence, in almost any form it may happen to take, of every nation-state" (Wasserstrom, p. 543).

⁴³ Anthony Black, "Nations and Community in the International Order," Review of International Studies Vol. 19, No.1, January 1993, p. 88.

conceptions may very well begin from within our immediate community, but why should it end there? As Kai Nielsen says:

We might very well work out from the community with which we presently identify to a wider community,...even to humanity at large. To say we must work out from the networks we are says something reasonable about the points from which we start and, perhaps, even about the points from which we must start, but it says nothing about being contained within or constrained to remain with the parameters of that starting point.⁴⁴

While it is likely to be true that a close-knit community, like the cultural unit, can hold more in common than a loosely united group, it does not follow that a community as stretched out as the "global village" can hold nothing in common. While it may be correct to say that the political community gives context to many of our individual rights, it does not follow that the "supercommunity" of humanity is too vague and broad to situate at least some basic notion of individual rights.

I have in mind here the basic rights Henry Shue speaks of. Basic rights are basic in that they are essential for the realization of other rights and therefore are "everyone's minimum reasonable demands upon the rest of humanity."⁴⁵ These rights include security rights -- the right not to be subject to killing, torture, assault, and so -- and subsistence right -- the right to

⁴⁴ Kai Nielsen, After the Demise of the Tradition; Rorty, Critical Theory, and the Fate of Philosophy (Westview Press, Boulder 1991), p. 153.

⁴⁵ Henry Shue, Basic Rights (Princeton University Press, Princeton 1980), p. 19.

water, adequate food, shelter, clothing and the like.⁴⁶ Given our common understanding of human needs and vulnerabilities, these rights are not free-floating and unsituated rights as communitarian opponents of universal individual rights are often quick to object, but they are indeed situated in our conception of what it means to be a member of humanity. While the detailed implementation of these rights may be culturally or economically contextual, it is difficult to argue that these rights, broadly conceived, cannot apply at all under certain cultural or political context. Members of any political community minimally have claims to these rights. My aim here is not to argue that human rights exist (this is a separate metaethical project itself); rather my point here is that given the claims that rights make sense only within bounded communities, there is still nonetheless conceptual space for universal (i.e. transnational/transcultural) rights. Thus it is not true that there is no "Archimedean point" for making moral judgements from without a community. Respect for basic rights sets the floor below which no community should fall. This standard is universal in that it applies to all irrespective of their history, culture and economic status.

Communitarians argue that the right to a community is a basic right as well. That is, the right to community is necessary for the realisations of other human rights. But if this is the case, this is in reference only to communities within which their members can come to realize their other rights and needs. But surely members of

⁴⁶ Ibid., pp. 18-29.

a community who are violated by a tyrannical regime can hardly be said to belong to a community that is conducive for the realisations of other individual rights. Surely none of those so violated would want to call such a community necessary for the realisation of their other rights, and to insist that all others should refrain from "meddling" with their internal affairs. Only members of a political community that in fact promotes their other rights would regard their community as a good to be treasured and hence to be protected from outside encroachment. "While community involvement is necessary, it is not always sufficient for protection of rights, and in fact community involvement is not always sufficient for the preservation of that very community, as in the case of intractable civil conflict. Moreover, it is not always damaging to a community to destroy a state. Wrecking the present Haitian state apparatus, for example, is damaging to one Haitian community but not to the Haitian community. The right to a community, thus, does not support a principle of universal non-intervention."⁴⁷

Indeed, some philosophers argue that the non-intervention principle be applicable only to legitimate states. David Luban asks, "Can the UN definition [of non-intervention] be repaired then, by restricting the concepts of sovereignty and aggression to legitimate states?"⁴⁸ He charges that the current doctrine on sovereignty suffers a "conceptual lacuna" because of its

⁴⁷ This argument was based on a suggestion by Drydyk.

⁴⁸ Luban, p. 166.

indifference to legitimacy; it fails to take into account the relationship between men and women to their states in a morally cogent fashion. "A legitimate state has a right against aggression because people have a right to their legitimate states."⁴⁹ Non-intervention is thus not a given, or an unconditional right, but a right that is subject to the relationship between a people and their state. Of course what is legitimacy is difficult to define, but clearly a state is legitimate if it serves the well-being of its members, and clearly it is not when it violates their rights.

Walzer's reply here is that there are two levels of legitimacy. A state can be legitimate internally while illegitimate internationally -- "A state is legitimate or not depending on the 'fit' of the government and community, that is, the degree to which the government actually represents the political life of its people."⁵⁰ It is out of deference to the due political process of a state that we recognize two levels of legitimacy. He says, "It has to do with the respect we are prepared to accord and the room we are prepared to yield to the political process itself, with all its messiness and uncertainty, its inevitable compromises, and its frequent brutality."⁵¹

But this is a problematic claim. That the due political process of a people has moral value cannot be denied. What can be challenged is the assumption that it outweighs other moral

⁴⁹ Ibid.

⁵⁰ Walzer, 1980, p. 214.

⁵¹ Ibid., p. 229.

considerations. For example, we do not say that allowing the internal political process of Somalia to take its course is more important than averting the deaths of thousands. Even if the United States led intervention may hinder the due political process of the Somalis, we say that other concerns, individual lives namely, take precedence. The due political process of a community is morally desirable, but so are the basic rights to subsistence and security. Contra Walzer, we do not need mass expulsions or enslavement before we can conclude that the "fit" between a people and their government is missing; the "fit" is amiss every time the state violates the basic rights of its members. "Basic rights," to recall Shue's point, "are everyone's minimum reasonable demands upon the rest of humanity."⁵² These rights are basic "because while they are neither intrinsically more valuable nor more enjoyable than other human rights [e.g., a right to due political process], they are means to the satisfaction of all rights, and thus they must be satisfied even at the expense of socially non-basic human rights if that is necessary."⁵³ A reasonable flourishing of basic rights is the minimum moral standard that has to be met before any talk of political process can make sense. What is the relevance of political process to people who lack security or basic subsistence? When one lacks these basic needs, one's moral agency is undermined. Individuals with these vulnerabilities are unlikely to be able to meaningfully participate in any process of self-determination.

⁵² Shue, p. 19.

⁵³ Luban, pp. 174-175.

Rawls, in an interesting departure from his position on intervention in A Theory of Justice, now argues that non-intervention applies only between well-ordered (liberal or nonliberal) regimes.⁵⁴ The three necessary conditions for a well-ordered regime are, he notes: "that it respect the principles of peace and not be expansionist, that its system of law meet the essentials of legitimacy in the eyes of its own people, and that it honor basic human rights [my emphasis]."⁵⁵ But he adds: "If, however, these conditions are violated, external pressure of one kind or another may be justified depending on the severity and the circumstances of the case."⁵⁶ Thus, outlaw regimes, as Rawls calls regimes which violate any of these three conditions, do not have the right to non-intervention. Basic rights provide one of the bedrocks below which a regime must not fall if it is to be granted the right to non-intervention.

The most controversial points of the communitarians to me are the claims that our communal values determine our morality and that our moral judgement makes sense only within a particular cultural setting. From these claims, it follows that outsiders are in no

⁵⁴ In A Theory of Justice, Rawls had argued, "The basic principle of the law of nations is a principle of equality. Independent peoples organized as states have certain fundamental equal rights. This principle is analogous to the equal rights of citizens in a constitutional regime. One consequence of this equality of nations is the principle of self-determination, the right of a people to settle its own affairs without the intervention of foreign powers [my emphasis]" (Rawls, 1971, p. 378).

⁵⁵ Rawls, 1993, p. 79.

⁵⁶ Ibid., p. 80.

position to make moral judgements against a sovereign community. But consider the first claim that our morality is constituted by our community. As Will Kymlicka notes, it is not at all clear why one has to consider communal values as given. Communal values can be subject to evaluation and rejection⁵⁷. An individual may be constituted by her societal goals, but this does not mean she cannot step back to reevaluate these goals. We may find ourselves in roles, our roles may determine our conception of the good, but neither "are we trapped by our present attachments."⁵⁸ Our conception of right and good may be acquired within a societal context, but this does not tell us of its acceptability from the moral point of view, nor that we are necessarily compelled to accept it. Beitz notes correctly that:

[T]he questions of moral learning and moral motivation are distinct from that of the nature of morality ... the fact that our communal relationships play a major role, even a constitutive role, in defining us as moral agents does not imply that we are, or should regard ourselves as, incapable of achieving the degree of detachment or objectivity that the notion of impartial judgement requires.⁵⁹

As noted earlier, our communal affiliation may determine where we should start from when expressing our moral point of view, but it does not follow that we are thereby confined within it.

There are indeed cultural and historical differences that need

⁵⁷ Will Kymlicka, Contemporary Political Theory (Oxford University Press, Oxford 1990), p. 211.

⁵⁸ Ibid., p. 213.

⁵⁹ Beitz, "Sovereignty and Morality in International Affairs," Political Theory Today, David Held, ed. (Stanford University Press, Stanford 1991), p. 253.

to be taken into account when passing cross-boundary moral judgement. This is, however, different from saying we cannot pass such judgements. True, we may err occasionally, and some cases may prove extremely difficult to judge with certainty. On the other hand, we underestimate human resourcefulness if we concede that we as foreigners can never share the understanding of a community and hence ought not to pass moral judgement upon it. Modern communications, travellers' tales, anthropologists and a growing internationalism amongst peoples and states for example have provided us with knowledge of other communities and cultures and hence the tools for morally evaluating them. Thus the claim that outsiders are not in a position to pass moral judgements on other communities is unfounded.

CONDITIONS FOR PERMISSIBLE INTERVENTION

Thus, the principle of non-intervention rests on questionable moral foundations. While we remain in a international realm founded on a system of sovereign states, some method of ordering relations between states is necessary. But this need not take the extreme form of absolute sovereignty, as currently enforced by the principle of non-intervention. The principle of non-intervention, while it serves some purpose (e.g., to protect legitimate states) cannot be applied unconditionally and absolutely across the globe. As argued, the principle is either based on a false conception of states as moral agents in themselves, or a result of misplacing moral priorities. Sovereignty, if not to be done away with

completely, needs at least to be made less encompassing and absolute. Borders ought to become more permeable than is traditionally allowed, especially when it comes to matters of human rights. That is to say, sovereignty as an unconditional right of states is no longer tenable and intervention in the name of human rights should be permissible. If we accept the universality of some basic rights, then it is inconsistent at the same time to respect the absolute will of states when such respect contradicts these rights.

Thus, the non-intervention principle cannot be absolute. From the arguments presented in this chapter, we can conclude that the non-intervention principle is annulled, that is, intervention is permissible, when the following conditions obtained:⁶⁰

1) The basic rights of a people are being actively violated, or their deprivations of these rights are not adequately responded to, by the host state. A just intervention then has as its primary aim the restoration of human rights. As I argued earlier, non-intervention cannot be defended when the basic rights of individuals are systematically being violated.

2) The intervention must not cause more adversity than it intends to avert or correct. That is, as with any forceful measures, the principle of proportionality must be observed. Factors to count

⁶⁰ My proposal follows very closely those of Beitz, Luban, and Teson. For arguments thus, please see Teson, Humanitarian Intervention: An Inquiry into Law and Morality; Beitz, "Reagan Doctrine in Nicaragua" and Luban, "Just Wars and Human Rights".

here include not only human rights but also questions of international stability. The effective exercise of human rights, after all, is tightly dependent on regional and international stability. If an intervention to restore human rights within a society causes significant harm, say, in the regional surroundings (say due to military escalation, etc.), then such an intervention is morally impermissible.⁶¹ This would thus deflect one of the common arguments for a principle of universal non-intervention, namely that this principle insures overall good.

3) The intervention must be welcomed by the oppressed. This is to ensure the second condition and to prevent strategic intervention. Moreover, if intervention is to promote and protect self-determination rather than undermine it, the consent of the oppressed community is essential. This condition would thus disarm the non-interventionist claim that intervention threatens the self-determination and integrity of a community. How consent is to be actually obtained in practice is of course a contingent matter.

4) Finally, to ensure that the above conditions are not conveniently invoked by any one state to suit its strategic interests, that intervention in the name of human rights is not used as a "Trojan Horse" for big-power intervention, a permissible

⁶¹ For example, a military intervention in Tibet, supposing that this would liberate the people of Tibet, may be impermissible because a military confrontation with the Chinese army may cause greater harm regionally and internationally all things considered. But this does not rule out other non-military interventions that would meet the proportionality criteria. Concerted diplomatic and economic pressures on the Chinese regime may bring on positive results without too drastic side-effects.

intervention has to be one that is internationally approved. That is, only multilateral interventions are permissible; unilateral interventions carried out without the sanction of the international community are exceptionally prone to abuses and should not be condoned. This would rule out the US intervention in Panama "Operation Just Cause", but would rule in "Operation Restore Hope" in Somalia.⁶²

Point (4) was not brought up earlier, but I think it is a crucial one nonetheless. It may be objected by proponents of absolute non-intervention that allowing intervention in some cases sets us on the slippery slope towards international anarchy. Humanitarian intervention may become a convenient "Trojan Horse" for interventions that are merely self-serving. Indeed, it has been pointed out, "interventions under the cloak of altruism could be particularly seductive, and could be more difficult to criticize or to counter."⁶³ This is a genuine concern. But problems of abuses are not peculiar to the case of intervention but is an endemic problem in every aspect of our moral life. Fear of abuses should not prevent us from granting exceptions to principles; the burden, rather, is to ensure that such exceptions do not open the floodgates to abuses. Thus by restricting permissible interventions to multilateral interventions, we can provide the best possible

⁶² Thus, it is the decision-making procedure that has to be multilateral. A multilateral decision to intervene can be in the end headed by one state as with the US led operation in Somalia.

⁶³ This point was raised by an anonymous reader of the Public Affairs Quarterly.

safe-guard against abuses of interventions. An international authority, for example the Security Council of the United Nations, has to sanction all exceptions to the non-intervention principle.

There are worries here that an international decision making organ may be so mired in disputes over conflicting conceptions of rights and what counts as rights violation that no such decision would ever come about, and that the decisions made in any case would be highly politicised and only to the best interests of these decision makers. For example, while the United Nations was deliberating and vacillating over the atrocities in the former East Pakistan and Uganda, India and Tanzania respectively acted unilaterally in what many scholars consider exemplars of humanitarian intervention par excellence.⁶⁴ And interventions in certain powerful states although morally desirable are unlikely to be approved because the same states are also part of the decision making organ. But the concerns over an ineffectual international decision making procedure are methodological and not conceptual ones, and can be resolved in principle. For example, the problem of tardy decision making by the international community can be countered by establishing a subsidiary organ, adequately represented, to preside over questions of humanitarian intervention. Currently, such matters are pondered over by a highly politicised and inadequately represented United Nations Security Council. The immediate burden then, it seems, is to advocate for a

⁶⁴ For informative accounts on these cases, see Teson, Chapter 8.

reformed United Nations Security Council.

I have argued that intervention, despite the universally accepted principle of non-intervention can be permissible under certain conditions. In the next chapter, I shall ask whether permissible interventions can also be obligatory. That is, given that a particular case of intervention is permitted, can it also a moral duty to intervene? To this question we shall now turn.

CHAPTER III

HUMANITARIAN INTERVENTION AS A MORAL DUTY

HUMAN RIGHTS AND DUTIES

Intervention, as I mentioned earlier, is generally regarded by international law as illegal. However, as I have argued in Chapter II, the principle of non-intervention is subject to other moral concerns, human rights being one of the crucial ones. Should a state actively violate the rights of its members, the international community has the moral authority to intervene, militarily if the use of force is as a last resort necessary to correct the situation.¹ Even a statist like Walzer concedes that military intervention is permissible in cases where human rights violations are "so terrible that it makes talk of community or self-determination ... seem cynical or irrelevant."² Thus the sovereignty of a state is conditioned upon and limited by the extent to which human rights are observed within it. But is a permissible intervention also obligatory? For instance, if we agree that intervening in Bosnia-Herzegovina is permissible, is it also a moral duty to intervene?

In our query as to whether intervention can be obligatory,

¹ See also, for example, Luban's "Just Wars and Human Rights" and Charles Beitz's "The Reagan Doctrine in Nicaragua," Problems of International Justice, ed. Steven Luper-Foy (Westview Press, 1988), pp. 182-195.

² Michael Walzer, Just and Unjust Wars (Basic Books, New York 1992), p. 90.

another facet of sovereignty must be dealt with, namely the sovereignty of the potential intervening state. (By a potential intervening state, I simply mean any third state with the capability of intervening with a reasonable chance of successfully remedying the human rights situation.) The right of a state not to intervene, or its right to remain neutral, is an aspect of its sovereignty.³ To say that a state has a duty to intervene is to deny it its sovereign right to remain neutral. Can this facet of sovereignty also be subject to higher moral considerations? In other words, can human rights concerns not only override the sovereignty of the "host" state, but also the sovereignty of neutral states?

The immediate response here is that if we are willing to subject state sovereignty to human rights considerations, then it follows that the right to neutrality can be overridden when the call of human rights so demands; or, at the very least, when human rights abuses are "terrible" enough. Human rights are, after all, "the demands of all of humanity on all of humanity."⁴ Respect for human rights generates duties to refrain from interfering, duties to protect from deprivation, and duties to aid the deprived.⁵ As John O'Manique notes, duties do not arise merely from the existence

³ As Walzer notes, "States possess, first, a right to be neutral, which is simply an aspect of their sovereignty" (Walzer, p. 233).

⁴ David Luban, "Just Wars and Human Rights," Philosophy and Public Affairs 9, No. 2 (1980), p. 174.

⁵ Henry Shue, Basic Rights (Princeton University Press, Princeton 1980), p. 52.

of rights. But the effective exercise of one's rights requires the exercise of corresponding duties on the part of others.⁶ Thus if members of the international community take human rights seriously enough to ratify and endorse them, then it appears that they have a prima facie moral obligation to ensure the effective exercise of these rights.⁷

On the other hand, it is generally accepted that the international community is not the primary addressee of human rights. Given the complexity of the real world, there is in effect a division of moral labour (to borrow a term used by Henry Shue⁸). Human rights may be the claims of all humanity on all of humanity, but we assign specific agents to perform different duties pertaining to these rights. It is accepted in international relations that individual states are the primary bearers of these human rights obligations.⁹ That is, individual states are responsible for the effective exercise of the rights of their respective members, and a person's rights claims will be primarily against the government of the country she resides in.

⁶ John O'Manique, "Human Rights and Development," Human Rights Quarterly 14 (1992), pp. 92-95.

⁷ For example, member states of the United Nations are signatories to the Universal Declaration of Human Rights, and many are parties to the two International Covenants on Human Rights which are binding.

⁸ Shue, "Mediating Duties," Ethics 98 (July 1988), pp. 687-704.

⁹ See for example James Nickel, "How Human Rights Generate Duties to Protect and Provide," Human Rights Quarterly 15 (1993) pp. 83-84.

However, this does not mean that the state of one's residence is the sole duty-bearer or addressee of these rights. As James Nickel points out, if there are indeed human rights, the obligations and duties pertaining to these rights do not lie only with the primary duty-bearers. International institutions and third states carry a secondary responsibility to allow the effective exercise of these rights. Should a state fail in its responsibility to allow the effective exercise of the rights of its own citizens, the duty to protect these rights falls onto other states and international institutions. To quote Nickel:

[A] morally justified right does not just disappear, or cease to direct behaviour when it is systematically violated. In such a case, the right's capacity to generate obligations may shift so as to increase the responsibilities of the secondary addressees.¹⁰

Citizens who are being systematically prevented from exercising their rights by their own state seem to have a prima facie claim against foreign states to come to their rescue. There is thus a prima facie duty to come to the defense of individuals within their own state borders.

But there are two serious objections to this claim. One is the objection that because there is no assigned duty-bearer, because there is no "world-police" specially assigned to protect human rights in all corners of the world, no one state can have the obligation to do so. I shall label this the problem of unallocated duty-bearer. The other worry stems from the right of states to remain neutral. And this right to neutrality is simply an aspect of

¹⁰ Ibid., p. 85.

a state's sovereignty. I shall first examine the problem raised by the unallocated duty-bearer argument and discuss the right to neutrality in the section after.

OBLIGATIONS AND AGENCY

The unallocated duty bearer argument says that while the primary bearers of rights (for example, the respective states of individuals) are identified, and hence claims can be made against them, there are no secondary institutions identified to defend these rights.

One may suggest that there are international institutions and bilateral arrangements between states that identify secondary addressees of human rights obligations (e.g., the IMF, the various United Nations relief agencies, bilateral agreements between states and so on). Thus, it is inaccurate to say that there are no primary duty addressees other than the state assigned to promote human rights. However, the issue at hand is military intervention to protect rights. Currently, the obligations of these non-governmental or intergovernmental addressees do not include the use of military force. For instance, the United Nations does not even have the mandate to intervene to defend human rights, let alone having the duty to. When the United Nations intervenes, it does so on grounds that international peace and security are threatened. Regional military institutions do exist. But their main functions are to serve the strategic interests of their members. Member states of NATO, for example, do not see themselves as having a duty

to intervene in Bosnia-Herzegovina¹¹.

Thus, if third states or international institutions have the duty to protect human rights when a state fails to carry out its duty vis-à-vis its members, these duties are, at most, only general duties. That is, they are duties that are owed to everyone by everyone, but no one has been specifically assigned to carry them out. Unlike the special duties of states to protect the rights of its own members, which are specified and allocated, the general duties of third states and international institutions are unspecified and unallocated; hence they cannot be enforced.¹² Onora O'Neill says, "when obligations are unallocated it is indeed right that they be met, but nobody can have a right -- an enforceable and claimable right -- to their being met."¹³ She goes on to add that "enforcement [of rights] cannot be discussed or take place until obligations are identified and allocated."¹⁴ Obligations without an assigned duty-bearer, she argues, are

¹¹ The downing of Serbian planes by NATO on 28 February 1994 is "not strictly within the terms of the North Atlantic treaty ... in which signatories pledged to defend one another" (from "Allied Might Punishes Serbs", Manchester Guardian Weekly March 6 1994, p. 3).

¹² The distinction between general duty and special duty is from H.L.A. Hart, "Are there any Natural Rights?", Philosophical Review 64 (1955), pp. 175-191. Special duties are duties that arise out of past relationship, contractual arrangement, one's profession and so on. Special duties therefore has an identifiable duty-bearer. General duties, on the other hand, are duties that are owed to everyone by everyone, and the duty-bearer is not specified.

¹³ Onora O'Neill, "Transnational Justice", in Political Theory Today, David Held, ed. (Stanford University Press, Stanford 1991), p. 287.

¹⁴ Ibid., p. 296 (emphasis mine).

imperfect obligations and cannot be expected of any one. Accordingly, unless there is an institution or third state assigned to carry out interventions, there is no perfect obligation on anyone's part to intervene.

Imperfect duties are "incomplete duties".¹⁵ Generally, it is regarded that imperfect duties are duties that (disjunctively) are:

1. duties that do not specify what actions ought to be done.
2. duties that cannot be enforced externally.
3. duties that are not directed at any specific claimant.¹⁶

Imperfect duties are thus duties that cannot be demanded, or in O'Neill's words, duties that "cannot be claimed."¹⁷

The problem raised by the unallocated duty-bearer argument is a genuine one. However, this problem is a strategic rather than a conceptual one. If we are indeed sincere about human rights, then there is certainly no reason why enforcement of rights "cannot be discussed" or even "take place" when there is no prior identified duty-bearer. Consider this example by Joel Feinberg:

Suppose a man swimming off a public beach that lacks a professional lifeguard shouts for help in a voice audible to a group of thousand accomplished swimmers ...each has

¹⁵ O'Neill, Constructions of Reason: Explorations of Kant's practical Philosophy (Cambridge University Press, Cambridge 1989), p. 224.

¹⁶ Ibid., pp. 224-225.

¹⁷ O'Neill, 1991, p. 287.

a duty to attempt rescue so long as no more than few others have already begun their efforts. In short, everyone should use his eyes and his common sense and cooperate as best as he can.¹⁸

In an ideal setting, there ought to be a lifeguard present -- that is, a assigned duty-bearer who has a special obligation -- to carry out the rescue. But in the absence of a lifeguard, it does not follow that there is no obligation on anyone else to rescue the swimmer. There is no prior assigned duty-bearer here, nor therefore a special duty on anyone's part to rescue the drowning victim. But it still makes perfect sense to say that everyone has an obligation to act. This need not imply that everyone has to rush into the ocean (in fact this might not be desirable at all), but it does imply that all are obliged to cooperate as fully as possible, including deciding who should actually perform the rescue (for example, they may flip a coin, or draw straws, or some could volunteer and so on). While some are picked to perform the actual rescue, all others are to remain committed to the general rescue operation, ready to assist in any possible way. To say that general duties are imperfect just because there is no assigned duty-bearer is to ignore that there are practicable ways of determining agency and dividing our moral labour.

Thus, although a duty to do X is imperfect because of the lack of specificity of agency, it is reasonable to say, nonetheless, that there is a perfect duty to establish a cooperative scheme that would allocate and mediate this imperfect duty to do X. In the case

¹⁸ Cited in James Fishkin, The Limits of Obligation (Yale University Press, New Haven 1982), p. 83.

of the above example, it is incumbent upon all the swimmers present and within reasonable helping range to engage in a coordinated rescue plan. The participation in such a scheme is a perfect duty because it is clear who are the duty bearers for establishing this scheme: in this example, every competent swimmer with the knowledge that a person is drowning and within range to contribute. Thus, in cases where a group has an obligation to carry out a rescue, the immediate obligation of the individuals of this group may be to establish a method of adjudicating their individual duties rather than to carry out the actual rescue itself. That is, there is an immediate duty to "perfect", so to speak, their individual imperfect duties. The actual duty itself is deferred but not vitiated. The final objective is still to carry out the rescue; establishing a cooperative scheme is a duty only because it aims to serve this end. What such a cooperative scheme looks like is of course a contingent matter. Depending on the urgency of the end, on the resources and means available, and the means necessary to meet this end, a cooperative scheme may be hasty, impromptu and ad hoc, or it may require the establishment of permanent institutions.

Let us return to the issue of military intervention. In an ideal (ideal here not is taken to mean morally ideal but organisationally ideal) international arena there ought to be an international "police force" to protect individuals from their states' excesses. Given the difficulty in coordinating humanitarian intervention on an ad hoc basis and the urgency and atrocities of some of the cases that do crop up, a permanent institution to

mediate this duty is desirable, strategically and morally. However, it does not follow, because there is currently no assigned or established institution to defend human rights, that no one state has a duty to do so should the need arise. In such a case, members of the international community have a duty to see to it that the community's duty is carried out. They have the immediate duty to participate in a coordinated rescue plan and decide how to most effectively mediate their duties. Existing international and regional organisations can provide the forum necessary for making these strategic decisions. There are indeed practicable means to decide which states ought to intervene. There are certain states which are more capable or suitable than others for carrying out military actions. It is indeed not too unreasonable to say that global or regional military powers, because of their military capability, have a special obligation to defend the rights of foreign nationals. Military capability, after all, determines the moral cost of any military engagement; whether we have an intervention that is prolonged and poorly conducted, or a quick incisive one depends to a large degree on the intervening force or forces. Also a state's geographical location, its historical ties with the oppressed people, its past involvements and so on, are factors that can be looked into when allocating duties to intervene. This does not mean that only those assigned duty-bearers carry the moral burden. The rest of the international community is not absolved of its general obligation. Nations not required or are unable to intervene are obliged to act within other capacities. For

instance Japan, which because of historical reasons is not able to contribute troops to multilateral military efforts, can nonetheless fulfil its general obligation by contributing financially or logistically.

It is precisely because there are general duties that we assign people with specific roles to carry out these duties. That is, general duties generate special duties, and not the other way round, as the unallocated duty-bearer argument suggests. Special duties are not themselves the source of duties. Special duties are simply devices for mediating general duties by determining who should do what. In Robert Goodin's words: "A great many general duties point to tasks that, for one reason or another are pursued more effectively if they are subdivided and particular people are assigned special responsibility for particular portions of the task."¹⁹ Special duties divide the moral labour amongst different agents. General duties are logically prior to special duties and they persist whether there are special duty-bearers or not. Even if there are special duty-bearers, general duty-bearers must be ready to shoulder the burden should the special assignees fail to live up to their responsibilities. Thus, should a state fail in its responsibility to allow the exercise of the rights of its members the responsibility of third states towards these individuals is made salient. Likewise, if there is a duty, the lack of the necessary institution or mechanism for carrying out the duty does

¹⁹ Robert Goodin, "What is so Special about Our Fellow Countrymen?", Ethics 98 (July 1988), p. 679.

not vitiate the duty. If we are unable to carry out the obligation to do X only because the practical means for doing X are lacking, it does not follow that there is no demandable duty to do X, but rather it follows that we have the immediate duty to establish the necessary institution or groundwork required for the fulfilment of X.

The problem raised by the unallocated duty-bearer objection, thus, does not show why there is no obligation to intervene in the absence of a specified duty-bearer or institution. At best, this argument only shows that there are strategic reasons why the international community should establish a permanent international institution (e.g., an international police force) specifically assigned to carry out military intervention. (Whether this is in fact a moral duty is the topic of Chapter IV). But it cannot correctly conclude that prior to such an arrangement, there is no duty at all. Let me now move on to the next objection, the argument from the right to remain neutral.

DUTY AND THE RIGHT TO REMAIN NEUTRAL

"War is hell," to quote General William Sherman's famous dictum. The right of states to remain neutral derives from its sovereign right not to undertake the risks of going to war. James Fishkin notes, "Certain level of sacrifice cannot be morally required of any given individual...There are limits, in other words, on what can be demanded of someone as a matter of

obligation."²⁰ No sovereign moral agent is morally obliged to sacrifice herself for the sake of others. For instance, in domestic morality, no one can be morally obliged to die for the sake of others. J.O. Urmson writes that a soldier who throws herself on a grenade to protect her comrades performs an act that cannot be considered obligatory. It is a heroic act for which she should be morally commended, but none of us are morally required to play heroes.²¹ Such acts are supererogatory acts and beyond the call of duty. That is, there are limits to the sacrifice that can be morally expected of us.

But it may be replied to this objection that when a state intervenes, it can, in many cases, bring about more good without causing itself comparable harm. For instance, the United States, being a military superpower can intervene in, say Somalia (which it did), without compromising its own national security in any significant way.²² The intervention, however, averted the starvation of half a million people. Therefore, if the moral costs on the intervening state are small compared to the end sought, intervening is a duty. This follows very closely Peter Singer's well known argument that "if it is our power to prevent something

²⁰ Fishkin, p. 14.

²¹ Cited in Fishkin, p. 18.

²² At the time of writing, the US engineered Somalia Intervention, "Operation Restore Hope", was generally deemed to be an exemplar of humanitarian intervention. The operation, however, has since lost sight of its goals and is perhaps no longer a useful example of interventions that cost little morally (to both sides) compared to their moral gains.

bad from happening, without thereby sacrificing anything of comparable moral importance, we ought, morally to do it."²³ We do not say of the individual who does not (to use Singer's classic example) save the drowning baby when it is in her power to do so (without incurring a comparable risk to herself) that she as a sovereign moral agent is entitled not to act. We would, on the contrary, insist that she is morally culpable here. Thus the same with states with the military competence if they choose not to intervene.

However, opponents of obligatory intervention would argue that the inference from individual obligation to state obligation does not work, especially not when we are speaking of military action. Walzer writes that when a state joins a war, while it risks its survival to this or that degree, "it [also] condemns an indefinite number of its citizens to certain death."²⁴ By intervening, a state is trading-off the rights of its citizens (qua soldiers) for the rights of foreigners. It would be sacrificing its own members for others. A sovereign state could choose to do this if it wants to, but it cannot be obliged to do so.²⁵

²³ Peter Singer, "Famine, Affluence, and Morality," Philosophy and Public Affairs 1, no. 3 (Spring 1972), p. 231.

²⁴ Walzer, p. 236.

²⁵ There is a stronger claim that says a state is obliged not to sacrifice its members for the sake of others. For example, Rousseau notes that "the sovereign, on its part, cannot impose on its subjects any burden which is useless to the community." Walzer hints at this: "The leaders of a neutral state are entitled to maintain that immunity (from entering into a war); indeed they may be bound to do so." (Walzer, p. 237, emphasis mine) But I suspect he is not fully committed to this strong position, otherwise he would

This argument seems right to me. Intervention (if purely altruistic) entails the sacrifice of some members solely for the sake of non-members. A sovereign state is not morally obliged to perform such sacrifices. All things being equal, one may decide at random whom to sacrifice if the trade-off is between two strangers. But if the trade-off is between a member and a non-member, one can rightly choose not to sacrifice the member. Even if the state holds a professional army, it is not at all obvious that it has the duty to commit it. True enough, professional soldiers have consented to risk death (for various ends the state desires). They are, of course, legally at least, obliged to do the state's bidding. This legal authority the state has translate into a moral authority on a contractarian account. That is, the state has the moral right to commit these soldiers to intervene. However, this does not yet tell us of the state's moral obligation to commit them for the sake of foreigners. On the contrary, the fact that there is a contractual obligation for them to die for the state puts the state in a morally delicate position -- the more caution and responsibility the state ought to exercise when 'employing these soldiers.²⁶ The responsibility weighs heavier on the state not to risk the lives of people who have placed their lives into its hand, for the sake of strangers.

However, what if by sacrificing some members, we are able to

not be able to justify interventions that are purely altruistic or humanitarian.

²⁶ I am grateful to Jay Drydyk for suggesting this point to me.

save more strangers? If we accept human rights to be universal and of equal worth to all individuals, then if more human rights can be exercised by sacrificing (or preventing the exercise of) the rights of few intervening soldiers, it would seem that there is a duty to intervene. Recall Richard Wasserstrom's argument:

if individual rights are the touchstone, then a 'utilitarianism of rights' -- determination of whether the net enjoyment of those rights would be increased by intervention -- appears to be one strong theoretical formulation by which to determine whether or not the initiation of war is a crime.²⁷

But I took this argument to apply only to Gould's objection, namely that intervention to protect human rights is self-defeating because the rights of some of the individuals we want to protect are necessarily violated. I argued that the principle of proportionality must be taken into account. If disproportionately more rights can be salvaged by sacrificing the rights of some, intervention is permissible. But the question in this chapter is quite different. We are asking: Is it obligatory for a state to commit some of its citizens to risk death for strangers? That is, do the rights of all, members and others, count equally in the eyes of a state, and thus a utilitarianism of rights account should be appealed to? For instance, Singer argues:

If we accept any principle of impartiality, universalizability, equality, or whatever, we cannot discriminate against someone merely because he is far away from us (or we are far away from him)... There would seem, therefore, to be no possible justification for

²⁷ Richard Wasserstrom, "Book Review: Just and Unjust Wars," Harvard Law Review 544 (1978), p. 544.

discriminating on geographical grounds.²⁸

Or is the state entitled to count its citizens as morally more significant than others, and hence is exempted from the utilitarianism of rights principle?

Walzer opts for the latter. Challenging the utilitarian claim that geography is no grounds for discrimination, he writes:

[Leaders of a sovereign] state are not required to calculate as if every human life carried the same moral weight ... at every moment in time. Their people's lives are not international resources [my emphasis] to be distributed in war so as to balance the risks or reduce the losses of other people.²⁹

Thus, even if risking the lives of, say hundreds, would prevent further massacre and bloodshed in Bosnia (which to date has cost more than 150,000 deaths), a state is not obliged to play the altruistic act utilitarian and count the lives of all, strangers and members alike, equally.

Walzer's argument rests on the assumption that the state has special duties to its own members. The special duty of a state towards its own versus its general duty towards others is the basis for counting one's compatriots differently from a foreigner. Thus, discriminating on basis of geo-political boundaries is not arbitrary or unjustified as claimed by utilitarians. Boundaries demarcate the extent of our special ties and hence the extent of our special duties. In other words, our boundaries reflect our moral priorities. This argument is founded on the claim that the

²⁸ Singer, p. 232.

²⁹ Walzer, p. 237.

members of a state enjoy a socio-political relationship with each other. As individuals, we are part of a social network which determines our allegiances and duties. Our individual self is in a large part constituted by our community³⁰. Our moral point of view -- our conception of the good -- is shaped by the community of which we are a part. Alasdair MacIntyre, for example, points out that "[t]he individual search for her good is generally and characteristically conducted within a context defined by those traditions of which the individual's life is a part."³¹ Thus the community of which one is a part is morally prior to another, and our affiliation is first to our immediate community members. As David Miller says, "The duties we owe to our compatriots may be more extensive than the duties we owe to strangers, simply because they are compatriots."³² Thus our priority is foremost to our compatriots; our special duty to them overrules any general duty we have for others.

It might be pointed out, and rightly so, that modern states do not constitute moral communities as such but are rather pluralistic polities. However some communitarians count the state as a

³⁰ Admittedly, community here might be better replaced by society. After all, as noted by a reader, "in large and pluralistic polity we may have slight sense of community." However, as my references tend to use the term community, I shall, to remain consistent, use the same word. Community thus as I shall be using it can be read as society or political community.

³¹ Alasdair MacIntyre, After Virtue: A Study in Moral Theory (Duckworth, London 1981), p. 207.

³² David Miller, "The Ethical Significance of Nationality," Ethics 98 (July 1988), p. 647.

community.³³ Walzer, for example, writes that the state is the only boundary a community can ever have³⁴, and that the state is "the arena within which self-determination is worked out and from which therefore foreign armies have to be excluded."³⁵ But even if this is a mistaken view, that the political community is not necessarily the moral community, nor the only community possible, it is undeniable that one has at least some sort of political responsibility (and thus special moral responsibility) to one's fellow citizens. As Rousseau argues,

He who desires the end desires also the means, and some risks, and even some losses, are inseparable from these means. He who is willing to preserve his life at the expense of others ought also to give it up for them when necessary ... when the prince has said to him: "It is expedient for the state that you should die," he ought to die³⁶

But he adds that "the sovereign, on its part, cannot impose on its subjects any burden which is useless to the community."³⁷ Accordingly, citizens of a state have certain duties towards their fellow citizens that they do not have towards others.

³³ For examples, see Walzer's Just and Unjust Wars, particularly Chapters 4 and 6, and "The Moral Standing of States: A Response to Four Critics," Philosophy and Public Affairs, 9 No. 3 (1980), pp. 209-229. See also David Miller, "Community and Citizenship," Communitarianism and Individualism, eds. Shlomo Avineri and Avner De-Shalit (Oxford University Press, Oxford 1992), pp. 85-100.

³⁴ Walzer, 1992, p. 90.

³⁵ Walzer, 1980, p. 210.

³⁶ Jean-Jacques Rousseau, The Social Contract (Washington Square Press, New York 1974), p. 36.

³⁷ Ibid., p. 33

The claim that we do have special allegiances towards our fellow citizens and compatriots is reasonable enough. That individuals are part of a community or political unit and hence have duties towards it and its members has much truth. The responsibility of democratically elected states is surely foremost to the individuals whom they are representing. But this does not follow that we do not have general duties at all vis-à-vis outsiders. Indeed one can rightly wonder where ends the community and the strains of individual commitment. Why should the community, and thus duties, end at the borders of a state? Our communal affiliation, rather than being fixed and rigid, is fluid and circumstantial. Our sense of community changes depending on the circumstance we find ourselves in. Depending on our aims and objectives, we often find ourselves seeking allegiance with one community over another. For instance, during the Second World War, all Allied nations identified themselves as a single community bent on defeating the Axis states. This allegiance quickly ended with the end of the War. Recall, also, how quickly a coalition amongst traditional hostile communities formed against the Iraqi state during the gulf crisis, and how quickly this coalition dissolved with the end of this crisis. Indeed, rather than being constrained and confined within separate isolated communal units, the global communities are more accurately described as overlapping units or a series of concentric circles. Thus, while we operate mostly within a smaller immediate community, it does not imply that we are only contained within one community. A British Columbian may, for

instance, feel she is British Columbian first, Canadian second and North American thirdly. Her sense of community is not confined within a single set but within a composite of sets. Her moral commitments may be strongest within her immediate community, but this does not imply that there can be no commitment towards a larger community or even a commitment to the "supercommunity" of humanity. Recall Nielsen's point:

We might very well work out from the community with which we presently identify to a wider community, ...even to humanity at large. To say we must work out from the networks we are says something reasonable about the points from which we start and, perhaps, even about the points from which we must start, but it says nothing about being contained within or constrained to remain with the parameters of that starting point.³⁸

There is no logical reason why we are to remain trapped within our immediate community. Our sense of community need not be confined within a narrow and rigid unit. It is true that the strands of our commitment may be much weakened the further out we extend our sense of community, but this is different from saying that such commitments do not, or cannot exist. While it may be correct that the strands of our commitment are strongest to our immediate community members, these commitments may be overridden by the weaker strands of commitment to others by virtue of the moral gravity or urgency of the latter. Likewise, while a state has a special duty towards its citizens, particularly if it is a democratically elected one, it does not follow that it has no duty

³⁸ Kai Nielsen, After the Demise of the Tradition; Rorty, Critical Theory, and the Fate of Philosophy (Westview Press, Boulder, 1991), p. 153.

per se towards foreigners. That a state's moral priority is to its citizens does not imply that it has no duty whatsoever to others. All things being equal, if there is a trade-off between rescuing a member or a stranger, one can presumably choose to rescue the member and not be morally reprimanded. One can perhaps be permitted to say that she cannot sacrifice one member to rescue a stranger, or even two strangers. But what if things are not equal? What if it is to sacrifice one member to save, say a hundred? Or a thousand? Or what if the atrocities in question are those that "outrage the conscience of humanity," for example genocide, politicide, or ethnic cleansing? Can the demands of nonmembers, despite the moral outrageousness or the numbers involved, still not count? As the moral gravity of a situation increases, the burden of proof shifts and weighs more heavily on those who maintain that one member has more moral worth than many strangers. It seems to me that if the moral urgency of the demands of humanity in general increases, our priority ought to shift from our immediate community to the larger community of humanity. Our general duties to humanity in these cases ought to override our special duties to compatriots. Membership carries weight but not absolute nor decisive weight. Membership consideration has to be counted against others, for example, the strength of the demands of others. Thus, Walzer's claim that a state can never have the duty to sacrifice some of its own for others no matter how grave the situation is rests on the false premise that moral duties begin and end at the borders. If we are willing to agree that going to war to defend compatriots can

sometimes be an obligation, then there is no logical reason why this obligation cannot extend to strangers also. And if we are willing to justify the killing of innocents on the grounds that "[w]e might better say that it is possible to live in a world where individuals are sometimes murdered, but a world where entire peoples are enslaved or massacred is literally unbearable,"³⁹ then we have to concede that sending our own to war for the sake of others can sometimes be a duty. Allowing us to stand aside and watch large scale human rights violations unfold because we cannot be morally demanded to act is indeed to live in a world which is "literally unbearable".

Therefore, as argued in Chapter II, the kind of moral principles we want to enforce must be principles we can be reasonably expected to live up to. By allowing special duties absolute moral weight over general duties, we would have to accept a world wherein we would allow others, who are capable of ending the massacre, to stand by while hundreds of thousands are being slaughtered because of our special duty to them. This, as pointed out earlier, risks damaging the credibility of our moral-language. It is a moral point of view which cannot be upheld by compassionate people. To recap, as Rawls notes, "when adopting principles, we need also to consider the strains of commitment. We should not accept principles whose consequences we cannot accept, or

³⁹ Walzer, 1992, p. 254.

principles that can be adhered to with great difficulty."⁴⁰ We do not want to live in a world in which membership carries infinite and absolute weight and is never violable; the strains of commitment to such a principle would be, to borrow Walzer's phrase, "literally unbearable" under certain circumstances.

It may be objected that strangers are not involved in the constitution of value, in the set of social relations and traditions that keeps alive our feelings and beliefs about what a good life is. Thus we do not have obligations to them. However, as I noted, we do have obligations to strangers if only because we are assentors to the concept of universal human rights. The question, then, is not so much whether we have any obligation to strangers as what is the strength of this obligation. If a state is obliged to conscript some of its own in order to protect the well being of its community, why can it not have the same obligation to protect the well being of other communities? Why is our obligation to others seemingly weaker? What is the morally relevant difference between us and others that we could be called on to risk death for compatriots and not for others? As I have noted, there is a morally relevance difference here, namely, the state, because of its socio political relationship with its subjects, has a special duty towards its own subjects. The mistake, as I have argued, lies not so much in the denial that others do not count at all as in the claim that compatriots take absolute priority. And I have tried to

⁴⁰ John Rawls, A Theory of Justice (Harvard University Press, Cambridge 1971), p.176.

Resolution test chart showing patterns of vertical and horizontal lines with numerical values: 1.0, 1.1, 1.25, 1.4, 1.6, 1.8, 2.0, 2.2, 2.5, 2.8, 3.2, 3.6, 4.0, 4.5, 5.0, 5.6, 6.3, 7.1, 8.0.

MICROCOPY RESOLUTION TEST CHART
NATIONAL BUREAU OF STANDARDS
STANDARD REFERENCE MATERIAL 1010a
(ANSI and ISO TEST CHART No. 2)

show that this claim of absolute priority is false. Our obligations to others, although generally weaker, can at times override our obligations to members.

But my claim that the general demands of others can sometimes outweigh the special demands of members may be opposed by social contractarians. Even if contractarians accept the claim that the international community has consented to uphold human rights, they can argue that the positive duties associated with these rights are general positive duties. On the other hand, contractual duties, they will argue, are duties that are voluntarily assented to by specific individuals, and hence are special and more binding than general positive duties. Thus special duties can never be preceded by general positive duties. Not only do we have special duties to fellow citizens because of an existing social contract between us, but our special duties end at our state border precisely because this is the extent of our social contract. Our duties to our compatriots thus can never be overridden by our duties to foreigners.

But this claim, that special duties always override general positive duties can be challenged. Goodin, in Protecting the Vulnerable, argues that social contracts generate duties not because of the contracts themselves, as traditionally conceived, but because of the heightened vulnerability of the contractees vis-à-vis one another. In the end, it is not our contracts themselves but our vulnerabilities towards each other that bestow obligations on us. Our interest in human rights does not by itself generate

duties, but the effective exercise of these rights require corresponding duties. Thus, in as far as the vulnerabilities of others impede their effective exercise of some of their rights, vulnerability ought to be a concern to those of us who are sincere about universal human rights. Those who are vulnerable are least likely to be able to exercise their human rights. And in as far as humanity in general is vulnerable to the actions or omissions of humanity in general, we collectively carry a general duty to all others.

As noted earlier, special duties derive from our general duties. Membership itself does not create special duties, it merely accentuates general duties. I owe more to a fellow member not because her membership bestow on her a specially created right, but because membership heightens her existing right vis-à-vis me. My duty towards a fellow citizen is not a duty created specifically by our political relationship, but a general duty made more salient -- she is made more vulnerable to me by virtue of our contract. I still have general duties towards others in as far as they are vulnerable to me, and these duties are not vitiated or annulled because of my special duties to some. Generally, our special duties override our general duties but not because they are special per se, but because those to whom we owe special duties are more vulnerable to us than those to whom we owe general duties.⁴¹ This

⁴¹ One to whom I have promised that I shall do X to is counting on me and perhaps no one else to do X, and hence is especially vulnerable to me. So although everyone else in general also desires X done to them, they are not specifically counting on me to perform X to them. Hence my special duty towards my promisor is stronger

ranking of duties is, thus, only a general guide and can be overturned in special cases. In the case of wide-spread human atrocities in foreign lands, the vulnerabilities of foreigners can become graver and more serious than those of fellow contractees, and as such our general duties towards them can override our special duties towards compatriots.

A legitimate question I need to address at this point is: How morally grave or urgent must the demands of others be before we have a duty to sacrifice some of our own? Where is the cut-off point at which our general duties to others begin to outweigh our special duties to members? This is of course a difficult question, and many sincere and well informed moral agents will disagree on the answer. I shall leave this very difficult problem of determining the cut-off point aside here (perhaps it is a question to which there will be no satisfactory answer). I contend, nonetheless, that there are extreme cases wherein most of us will agree that the cut-off point is well past, that the demands of humanity have outweighed the demands of members. Given the nature of military action (i.e., costs of human lives, especially lives of members in the case of altruistic interventions), only in cases where moral abuses are extreme can we say with confidence that intervention is obligatory. To some people, restricting obligatory intervention only to extreme cases sound like a small concession. This may be true, but nonetheless we can agree that extreme cases do exist, not only as fantastic philosophical examples but

than my general one to others.

historically and even presently. For instance most rational people agree that the Nazi threat during the 1930s-1940s was an extreme case given the extent of its abuses and its very nature and motivation. Most would agree that the war against Nazism was a moral duty even if no vital self-interests were at stake. The present situation in Bosnia-Hercegovina, for example, is another extreme case. If accounts we are receiving about the situation tell us anything, we must concede that the moral atrocities being committed there are of the most extreme kinds.⁴² We cannot argue that we should not sacrifice some of our "own" to rescue the Bosnians. The gravity of this situation ought to outweigh any membership consideration. To remain uncommitted here is to fail in our moral duty.

The conclusion I am drawing here is a weak rather than a strong one. While intervention is permissible whenever (conjunctively)

- (i) human rights are systematically being violated,
- (ii) when the good to be brought about outweighs the accompanying side-effects,
- (iii) when those whose rights are being oppressed welcome the intervention and
- (iv) when the intervention is internationally sanctioned,

⁴² See for example the United Nation Secretary General's report, Situation of Human Rights in the Territory of the Former Yugoslavia, UN Document S/24809, 17 November 1992, and the report of the US Senate Committee on Foreign Relations, Ethnic Cleansing in Bosnia-Hercegovina, August 18 1992.

an intervention is obligatory only if conditions (i) and (ii) are modified. The human rights violations must be "extreme" or "extraordinary" in kind or in numbers, and the accompanying side-effects to be considered include the lives of compatriots which may count for more (but not infinitely more) than others. Thus, not all permissible interventions are obligatory; that is, there is conceptual space for interventions that are permissible but not obligatory. This may not be enough for some ardent defenders of human rights. They may insist that all permissible interventions are necessarily also obligatory. But such a strong claim ignores the fundamental moral questions and difficulties (that we have discussed) associated with this issue. Being moral, not just complying but also the more fundamental task of knowing what the right thing to do is, is sometimes less than a straightforward task. The closer a moral situation approximates a desert island scenario, the more difficult it is to be moral. The costs of being moral in these cases are heavier and thus need to be carefully and painstakingly evaluated when choosing and enacting the right act. The case of obligatory intervention certainly approximates a desert island scenario -- the rights of some are to be violated to rescue others -- and its ensuing moral conflicts ought to be brought to bear and considered rather than be obscured behind the banner of human rights. As noted by Robert Jackson, "Political virtue in such circumstances involves not only the recognition that these divergent responsibilities exist, but also the determination to

make decisions in which due regard is paid to all of them."⁴³ The role of the philosopher is to flesh out these competing claims and to do a sincere assessment of them. And an honest evaluation may sometimes result in a weaker conclusion than we ourselves would like.

But if indeed there are interventions that are also morally obligatory, then it seems that the next step for the international community is to recognise this and to codify a principle of intervention, perhaps by enacting an international "Good Samaritan" law, making it thereby an enforceable duty for nations to come to the defense of other nationals when certain conditions obtain. In addition, as mentioned earlier, there is strategic advantage in establishing mechanisms or institutions that are specifically assigned to carry out military interventions. The creation of a international humanitarian defence force is one possibility. This shall be the topic of discussion in the next chapter.

⁴³ "Armed Humanitarianism," International Journal Autumn 1993, p. 604.

CHAPTER IV

ARGUING FOR A HUMANITARIAN DEFENSE FORCE

I have argued that humanitarian intervention can be a duty under extreme circumstances. In this chapter, I shall ask whether this obligation translates into an obligation to create an international volunteer humanitarian defense force. For the larger part of this chapter, I shall ask whether it is a duty to create such an institution. In the concluding section, I will show why it is morally desirable that interventions be conducted by a voluntary force.

I

Following Rawls, "[b]y an institution I shall understand as a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like."¹ Institutionalising intervention thus entails more than just stating the circumstances under which such an act is permissible and a duty (as argued for in Chapters II and III), but requires also the formal allocation of individuals and resources to carry out this action. An institution is thus a permanent arrangement wherein individual roles and duties are defined and resources are set aside for the performance of the institutionalised duty. I am not concerned here with the detailed implementation of such an

¹ John Rawls, A Theory of Justice (Harvard University Press, Cambridge, 1971), p. 55.

institution. For example, whether such a force should be centrally located or physically decentralised are questions I shall side-step. What is of interest here is whether there should be a established formal arrangement for intervention.

DUTY AND INSTITUTIONS

Human-rights duties include positive duties of the general class. These duties are duties of actions owed to everyone else in general. Examples of general positive duties (as I shall call them) would include duties to defend and protect the rights of others. Some philosophers argue that these duties cannot be enforced unless there are existing institutional arrangements vis-à-vis these duties. That is to say, without institutions, these duties cannot be morally demanded of anyone. On first glance, this may seem like a strange classification of duty. Surely, we would think, moral duties are by definition morally demandable; one can be morally demanded to perform one's duties.

But recall that in Chapter III I mentioned what some philosophers refer to as imperfect duties. These duties are moral duties, but they are duties that cannot be enforced unless institutionalised. Just to be clear on how "enforced" is used, allow me a small digression. O'Neill is using the term "enforced" not in the sense that a duty is actually enforced, but that it is morally demanded and hence is enforceable in principle. For example, she says of perfect obligations: "perfect obligations require action for all or for specified others, they have

correlative definite, assigned rights which can be claimed or waived and are in principle enforceable -- even in a state of nature."² A perfect obligation like the negative duty not to harm anyone is a morally demandable duty as it is clear who (namely, everyone) should do (or not do) exactly what to whom (namely, anyone); hence it is a duty that is enforceable in principle. It is a duty which O'Neill would consider enforceable even in the absence of any legal or social institutions. Let us return to the matter of imperfect obligation. As I have noted, O'Neill argues that positive general duties are imperfect obligations and these "[i]mperfect obligations can be enforced only when they are institutionalized in ways that specify for whom the obligation is to be performed, that is, that define who holds the counterpart rights and can claim or waive them."³ Thus, imperfect obligations, while they are not institutionalised, cannot be enforced (even in principle) because no one can be morally demanded to shoulder them. So while O'Neill recognises that there are general positive duties corresponding to human rights, these duties are only imperfect duties and thus cannot be demanded of anyone. They correspond only to "manifesto rights" at best, she claims."⁴

The class of moral duties that are imperfect is integral to

² Onora O'Neill, Constructions of Reason: Explorations of Kant's Practical Philosophy (Cambridge University Press, Cambridge, 1989), p. 191.

³ Ibid.

⁴ O'Neill, "Transnational Justice," Political Theory Today, David Held, ed. (Stanford University Press, Stanford 1991), p. 287.

Kant's ethical theory. While Kant's distinction between perfect duties and imperfect duties is far from clear, it is generally agreed that imperfect duties are duties that (disjunctively) are:

1. duties that do not specify what actions ought to be done.
2. duties that cannot be enforced externally, for example, by legal sanctions.
3. duties that are not directed at any specific claimant.⁵

Positive duties to promote the ends of others are imperfect duties in that there is no one specific act that one is required to do in order to promote their ends. The agent has the final decision on how she wants to bring this about. Or, as another example, one can choose whose ends one wants to promote. Thus the choice as to whose ends to promote and how to promote is left ultimately to the agent. Imperfect duties then are duties, but they are incomplete duties; they are duties thus that admit considerable latitude. Until these duties are institutionalised, until they are made specific, they cannot be enforced and thus cannot be demanded or claimable.⁶

Howard Adelman calls this the "evolutionary universal

⁵ Ibid., 1989, pp. 224-225.

⁶ The Kantian reason why imperfect duties cannot be claimed or enforced is as follows: For Kant, while it is permissible and even necessary to a degree to enforce our perfect duties, enforcing our imperfect duties is not only self-contradictory but it would also be a violation of our moral autonomy. "Moral autonomy can only be a personal achievement. It cannot be imposed from the outside. It comes when the person is consistently able to act virtuously" (Howard Williams, Kant's Political Philosophy [St. Martin's Press, New York 1983], p. 69.).

position" which "holds that the norms [to intervene, e.g.] become independent and universal only when the institutions of the civilized world evolved to support these ethical principles."⁷ That is, there is an enforceable duty to do X (where X is an imperfect duty) only when the means of doing X are previously established.⁸ But, as I have argued, the evolutionary universal position is a mistaken one. It is not necessarily the case that imperfect duties be institutionalised before they can be morally enforced. An ad hoc arrangement or informal cooperative scheme can allocate and specify an imperfect duty. The absence of a formal arrangement to duty does not imply that an imperfect duty can never be rendered enforceable, or made "perfect", so to speak. If some sort of organisation and allocation of duties are required in order to fulfil a duty to do X, then the duty to do X is only deferred while there is an immediate duty to establish the necessary means for the fulfilment of the actual duty. Shue rightly notes this: "It will often be the case that resources are best employed not in direct action but ... in creating and building [effective institutions]."⁹

⁷ Howard Adelman, "The Ethics of Humanitarian Intervention: The Case of the Kurdish Refugees," Public Affairs Quarterly Vol 6, Issue 1, January 1992, p. 66. It needs to be noted that this is not Adelman's own position.

⁸ Besides O'Neill, another philosopher who holds this view according to Adelman is Thomas Pogge. Pogge argues that "the global moral force of human rights is activated only through the emergence of a global scheme of social institutions" (Pogge, "An Institutional Approach To Humanitarian Intervention," Public Affairs Quarterly Vol 6, Issue 1, January 1992, p. 91).

⁹ Henry Shue, "Mediating Duties", Ethics 98 (July 1988), p. 696.

O'Neill's point is that a rights-based theory cannot account for imperfect duties. She says that rights corresponding to imperfect duties "drop out of sight", that they are only "manifesto rights". On the contrary, it can and does so better than the obligation-based theory of O'Neill. A rights based theory can argue that it is a duty to institutionalize our imperfect duties in the following way. Human rights generate general positive duties, and the force of these duties in turn generates (if necessary) the duty to establish the means to fulfil these duties. In other words, the duty to establish the means to do X (where X is a human rights duty) derives from the duty to do X. It is not the case, as the evolutionary universal position would have it, that there is an enforceable duty to do X (where X is an imperfect duty) only if this duty is institutionalised.¹⁰ In O'Neill's account, imperfect obligations are activated only when there exist institutions to enforce them. A human rights account on the other hand could (rightly) call for the establishment of these institutions should they be required for the fulfilment of these rights; a human rights account would put duties before institutions and, more crucially, could call for the creation of institutions if necessary.

O'Neill notes that if we are unable to fulfil our imperfect obligations, "we will have reason to construct and support institutions that realize and foster the discharge of [imperfect]

¹⁰ Recall the earlier point that enforceability refers more to moral "demandability" and hence to an enforceability in principle rather than enforceability in actuality.

obligations."¹¹ But how compelling is this reason? What is the moral force behind it? Why is the fact that we cannot fulfil our imperfect obligation itself a moral reason for institutionalising them? An obligation-based account like O'Neill's cannot tell us why this ought to be so. Indeed O'Neill concedes that "[i]t is a point of controversy whether imperfect obligation should ever be legally enforced ... All that is claimed here is that in institutionalising such obligations we make them enforceable."¹² All she can admit here is that when general positive duties are institutionalised, they are specified and hence enforceable. But when they are not, they are not enforceable and there is no principled reason why we should institutionalise them, other than, perhaps, by appealing to our sentiments.

On O'Neill's account, the means-creating obligation (i.e., the duty to institutionalise imperfect duties) is at best imperfect as well. Imperfect obligations can only generate imperfect obligations to create institutions that would then further or "perfect" these imperfect obligations. I do not see how it could be argued that it is a perfect obligation to create such duty-perfecting institutions. So, if imperfect obligations can only (at best) generate imperfect obligations to create institutions, how forceful is her theory? What is the strength of a moral principle that cannot command us to "further" our imperfect duties? As for Kant, the move from an imperfect duty to institutionalising these

¹¹ O'Neill, p. 199.

¹² Ibid., fn 17.

imperfect duties is a task left to the virtuous.

The only possible way one could show that it is a perfect duty to "perfect" or "further" (i.e., to institutionalise) our imperfect duties is to show that a failure to do so is a principled failure to fulfil our imperfect obligations. As Kant notes:

Imperfect duties are, accordingly, only duties of virtue. Fulfillment of them is merit (meritum = +a); but failure to fulfill them is not in itself culpability (demeritum = -a) but rather mere deficiency in moral worth (=0), unless the subject should make it his principle not to comply [my emphasis] with such duties.¹³

That is, unless it can be shown that by not choosing to "further" our imperfect duties (i.e., by institutionalising them) we are actually adopting a maxim not to "further" these duties, failure to "further" imperfect duties is only a lack of virtue and "not in itself culpability". But how can we count the failure to create such institutions as "a principle not to comply with such duties"? We may fail to adopt a principle to "further" imperfect duties, but this does not imply that we have adopted any principle to the contrary. Thus, institutionalising imperfect duties remains at best an imperfect duty on O'Neill's account, a duty that cannot be demanded of us.

Restricting demandable general positive duties to institutionalised duties is an inadequate account of duties. Most of us would agree that there are morally demandable duties over and institutionalised duties. For instance, the move to greater racial equality in southern United States in the 1960s was morally

¹³ Immanuel Kant, The Metaphysics of Morals, trans. Mary Gregor (Cambridge University Press, Cambridge 1993), p. 194.

enforceable duty (in the sense that it can be morally demanded) although it was not an institutionalised duty. It is the moral demandability of an act that orders its institutionalisation, and not the other way around. We would want to see non-institutionalised duties carried out as well, and even institutionalised if necessary. O'Neill's obligation based ethics is unable to demand the institutionalisation of imperfect duties.

A human rights based account of intervention can, on the other hand, show why there is a duty to organise and mediate individual duties with regard to intervention. The question to ask next, then, is whether we need to create a permanent institution to mediate this task or whether we could rely on impromptu and ad hoc arrangements? After all, such an arrangement could be informal and impromptu, or it could be formalised, and institutions be established to perform this task. Is there any reason to prefer one arrangement over the other? Let us then ask if there are moral reasons why we ought to institutionalise such an arrangement.

Among philosophers who believe in the moral worth of just institutions, there are two views on the issue of institutions and duty to create them. On one side, we have some philosophers (e.g., Shue, Goodin) who argue that it is (what I shall label) a contingent duty to establish institutions. That is, whether it is a duty to form an institution that would advance or promote human rights is contingent on the nature of the task at hand and other factors like efficiency, available resources, etc. For instance, Shue notes: "Cooperation and coordination can be achieved by

organizing, and they can be achieved over the long term through the establishment of institutions."¹⁴ On the other, we have philosophers (e.g., Rawls and Pogge) who argue that it is (as I shall label it) an a priori duty to establish institutions that are just. That is, independent of the contingencies on hand, we have a duty to create just arrangements. I call them a prior duties because it is argued that we have these duties based on moral reason alone. In A Theory of Justice, Rawls famously writes:

From the standpoint of the theory of justice, the most important natural duty [my emphasis] is that to support and to further just institutions ...[and] we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves.¹⁵

Kant also argues (unlike the traditional contractarians like Hobbes, Rousseau et al.) that it is not merely prudent to leave the state of nature and enter into social contract and form a civil state, but that it is also a moral duty to do so.¹⁶ He writes:

If you are so situated as to be unavoidably side by side with others, you ought to [my emphasis] abandon the state of nature and enter, with all others, a juridical state of affairs, that is, a state of distributive legal justice¹⁷

Let me first consider whether there is an a priori duty to

¹⁴ Shue, p. 695.

¹⁵ Rawls, p. 334.

¹⁶ Jeremy Waldron calls Kant the "best candidate in our tradition for such an argument [that we have an a priori duty to form just institutions]". From Waldron, "Special Ties and Natural Duties," Philosophy and Public Affairs Vol 22, No. 1 (Winter 1993), p. 14.

¹⁷ Kant, pp. 121-122.

establish a humanitarian defense force.

AN A PRIORI DUTY TO CREATE JUST INSTITUTIONS

Rawls call the creation of just institutions a natural duty because:

The principles [for natural duties] that hold for individuals, just as principles for institutions, are those that would be acknowledged in the original position [my emphasis]. These principles are understood as the outcome of a hypothetical agreement.¹⁸

That is, individuals behind the veil of ignorance, according to Rawls, would agree to establish just arrangements when they do not exist.

But this is a problematic claim. Rawls assumes that every individual in the original position would unconditionally agree to this principle. That is, in a Kantian sense, it is a principle that all rational and reasonable individuals ignorant of their social status, wealth, talents would adopt. But this claim is questionable. It is not at all obvious that individuals behind the veil of ignorance would choose to further or create every possible just institutions. True enough, a maximin strategy¹⁹, one that maximizes what you would get should you end up in the worse-off (minimum) situation, would compel individuals behind the veil of

¹⁸ Rawls, p. 115.

¹⁹ Rawls describes the maximin strategy: "we are to adopt the alternative the worst outcome of which is superior to the worst outcomes of the others" (Rawls, p. 153). A maximax strategy, on the other hand, is one that chooses the alternative the best outcome of which is superior to the best outcomes of the other alternatives.

ignorance to create just institutions or arrangements that would further justice (that is, institutions or arrangements that would benefit the lesser-off). 'Maximiners', unaware of the probability that they may wind up in the worst-off position of any alternative, would choose to establish just institutions so as to mitigate the situation of the least advantaged members of society.

But it is not at all evident that rational and reasonable individuals behind the veil of ignorance would opt for the maximin strategy. Brian Barry and Thomas Scalon argue that by assuming that individuals without knowledge of their status, talents, wealth, and the like would take the most conservative option, Rawls "makes a gratuitous psychological assumption which he is not entitled to make."²⁰ A participant in the original position with the psychological make-up and ambition of say, a Donald Trump, would surely not opt for a maximin strategy but perhaps a maximax one. One with the altruistic tendency of a Mother Teresa would likely opt for a minimax strategy. In these cases, very different principles would be considered as acceptable.

Kymlicka tries to salvage the original position. He points out that such criticisms of the original position are misguided. Rawls, Kymlicka points out, chooses a conception of the original position that holds up against our considered moral judgements.²¹ That is, Rawls 'rigs' the original position in a manner such that the

²⁰ Will Kymlicka, Contemporary Political Philosophy (Oxford University Press, Oxford 1992) p. 66.

²¹ Ibid.

principles it yields are compatible with our moral intuitions. But this is fair play, as political philosophy for Rawls is an exercise in wide reflective equilibrium.²² Principles are weighed against intuitions and vice versa, and both are adjusted accordingly to match. Thus his conception of justice allows him to assume an original position where individuals are placed on equal footing.

But this too generous a defence of Rawls. While it is correct that Rawls's project allows him to dictate what the original position should look like, he is not entitled to assume that reasonable and rational individuals would necessarily opt for the maximin strategy. A procedural justice as fairness requires a fair as possible starting point or initial bargaining position. This is indeed compatible with our considered judgements of what fairness is and what a fair and just procedure should look like. The veil of ignorance thus imposes this 'hypothetical' equality.

However, justice as fairness does not require that individuals make conservative choices, that is, choose the maximin strategy. Rawls is not entitled to assume that rational and reasonable individuals would necessarily be 'maximiners'; justice as fairness does not necessarily entail that. A minimax strategy, for example, is not antithetical to our considered judgement of what fair procedural justice is. Rawls, while he is entitled to dictate the setting of the original position, is not entitled to endow upon the individuals in the original position a particular psychology. Contrary to Kymlicka's defense then, Rawls has unjustifiably

²² Rawls, especially pp. 19-21, pp. 48-51.

presumed the psychology of his parties.

In fact Rawls notes, "I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities [my emphasis]." ²³ It seems, then, that Rawls assumes that anyone with a psychological propensity other than that of a maximiner is "special", and therefore it is not to be assumed that the parties in the original position would have such alternative propensities. But there is certainly no reason why a maximin psychology should be regarded as normal and a maximax one as special or a deviation. Thus the charge that Rawls has unfairly 'rigged' the original position by restricting the psychology of his original negotiators is well taken.

As such, pace Rawls, it is not at all obvious that individuals in the original position would agree that it is a duty to create just institutions. It is likely that they, being rational and reasonable, would agree to basic institutions without which there can be no realisation of any justice. But this is the most one should grant to Rawls. One should not extrapolate from this that all reasonable and rational individuals behind the veil of ignorance would necessarily agree to create just institutions a priori. Given the opportunity costs of creating and maintaining just institutions, it is not at all obvious that all individuals regardless of their psychological proclivity would assent to creation of just institution as a principle.

Indeed for Kant, it is a natural duty to create only one basic

²³ Ibid., p.12

just institution, namely the civil state. He does not say that it is a natural duty to create any extra-state just institutions. The reason why it is a natural duty to transcend the state of nature and enter into statehood is as follows:

Given the intention to be and to remain in this state of externally lawless freedom, men do one another no wrong at all when they feud among themselves, for what holds for one holds also in turn for the other, as if by mutual consent ... But in general they do wrong in the highest degree by wanting to be and to remain in a condition that is not rightful, that is, in which no one is assured of what is his against violence.²⁴

The highest degree of wrong, then, is that one remains in a condition which is devoid of justice; a condition wherein others (and the self) are liable to be treated as means only. Hence it is a natural duty to form the state only because justice would not otherwise be realised. "The state of nature is a state devoid of justice (status iustitia), in which when rights are in dispute (ius controversum), there would be no judge competent to render a verdict having rightful force."²⁵

But from this, it does not follow it is a duty to establish any other just institutions. The state is for Kant the necessary and sufficient condition for the realization of a rightful condition, that is, a condition where justice can, at least potentially, be realised. Of course there can be other just institutions and institutions to promote duties of virtue, but the creation of these institutions are not natural duties. Indeed, with

²⁴ Kant, p. 122.

²⁵ Ibid., p. 123.

regard to international institutions, Kant notes:

Nor can we say of nations as regards their rights what one can say concerning the natural rights of men in a state of lawlessness, to wit, that 'they should abandon this state.' (For as nations they already have an internal, legal constitution and therefore have outgrown the compulsion to subject themselves to another legal constitution that is subject to someone else's concept of right).²⁶

But while there is no natural duty, for Kant, to create institutions other than the just state, this does not imply that there is never a duty to create institutions. Pogge's institutional approach argues this point vividly. Recall that Pogge notes that it is difficult to prove that there is a natural or interactional duty to protect others. He says, however, that the institutional approach he favours allows us to implicate third parties for violations of human rights because of their causal responsibility, namely their participation in institutionalised violations of these rights, and thereby we can call on them to take positive action (if only to remedy their actions).

We are asked to be concerned about human rights violations not simply in so far as they exist at all, but only insofar as they are produced by social institutions in which we are significant participants.²⁷

That is, "all human beings are now participants in a global institutional framework that all human-rights violations have come to be, at least potentially, everyone's concern."²⁸ Just to recap,

²⁶ Kant, Perpetual Peace and Other Essays (Hackett, Indiana 1988), p. 116.

²⁷ Pogge, p.93.

²⁸ Ibid., p. 91.

the institutional approach says that we have duties as individuals or as collectives only because we are participants of institutionalised injustices. The approach is not concerned with how the exact duty is actually carried out (institutionally or individually) but with the foundation of these duties.

Indeed Kant is well aware of institutional injustices and the need to take positive steps to remedy them. In the Lectures on Ethics Kant notes:

And as our social system is so arranged that we take part in the universal and open give and take of business with peculiar profit to ourselves, our acts of charity to others should not be regarded as acts of generosity, but as small efforts towards restoring the balance that the general social system has disturbed.²⁹

And therefore:

charity to one's fellow should be commended rather as a debt of honour [my emphasis] than as an exhibition of kindness and generosity. In fact it is a debt, and all our kindness are only trifles in repayment of our indebtedness.³⁰

Thus, given that we are all in a global arrangement that is perversely unjust, we have positive duties to mitigate or remedy these injustices we are in many ways (directly or indirectly) responsible. On this institutional account then, Kant could argue that we have the following duties:

- a) One ought to mitigate a situation that has resulted from one's violation of duties of justice,
- b) If creating (just) institutions is necessary to mitigate or

²⁹ Kant, Lectures On Ethics, trans. Louis Infield (Methuen, London 1930), p. 211.

³⁰ Ibid., p. 236.

ameliorate the effects of one's violations of justice, one has the perfect duty to establish these institutions.

c) In so far as such violations are institutionalised, one ought to actively seek to abolish or at least reform these institutions.

But this account of duty can work only for a Poggian kind of institutional framework. That is, it works only in a framework that acknowledges our positive duties only because our past wrong demands them. But in the interactional model I prefer this move will not do. Recall that the interactional approach I opt for grounds positive duties not so much on past injustices but more on the force of human rights itself. I shall argue thus that there is a duty to establish institutions not because we need to correct our past injustices (Kant or Pogge), nor because it is simply a natural duty (Rawls), which may be hard to prove, but because it enables us to better fulfil our basic duties vis-à-vis recognised human rights. If the human rights of others are especially vulnerable to our not establishing a permanent arrangement for carrying out our duties, then we have the immediate duty to create such an institution. The duty is especially salient if the establishment of a permanent arrangement is necessary for performing the duty. That is, the duty cannot be effectively performed or cannot be performed at all without the implementation of an appropriate institution.

CONTINGENT DUTY TO CREATE INSTITUTIONS

A contingent duty to create institutions is a duty that is dependent on the nature of the duty in question and the circumstance under which this duty is known to be required.

Consider Robert Goodin's argument:

Suppose that in spite of the fact that capsizing [of yachts] are a regular occurrence in the area, the only village within several miles of the sinking ship has earlier failed to maintain a lifeboat or neglected to crew one it had. Surely we would hold the community as a whole responsible for the deaths resulting from this oversight. Having had every reason to expect emergencies like this, the community was simply irresponsible in not planning for these contingencies.³¹

Thus for Goodin, there is a duty to establish a permanent institution to carry out the rescue of sailors in the above case because there is a foreseeable need for such an arrangement (if the vulnerability of others is a concern to us and if we take our human rights duty seriously enough.) It may be possible for the villages to coordinate informally and carry out a hasty rescue plan as and when the need arises. But efficiency would call for a permanent formal arrangement. Efficiency matters because it improves the chances of our successfully fulfilling our duty. If it is known that a pre-established arrangement vastly increases our probability of success (in carrying out our duty), then the claim that it is a duty to formally organise is a very reasonable claim. After all, if we take our duties seriously, and if we know that they are in demand often enough and that the lack of formal organisation jeopardizes our chances of success, then we have an immediate duty to create a permanent arrangement. The force of the demands of others demands not just that we pay lip-service to our duties, but that we successfully, to the best of our abilities, fulfil them. As

³¹ Robert Goodin, Protecting the Vulnerable (University of Chicago, Chicago 1985), p. 137.

I have argued earlier, if our end duty is to do X, but doing Y is a necessary prerequisite for our satisfactorily doing X, then our immediate duty is to do Y. And if we know from past experience that the call to do X is frequent enough on one hand, and on the other hand doing Y is a lengthy process that needs more time to establish than the demand of X allows, then we have a duty to institutionalise Y, that is, to make Y a permanent arrangement. Indeed, if it is impossible to carry out a duty without the appropriate institution, the more obvious and salient the duty to create the necessary institution.

It is worthwhile pointing out here that Goodin is not a human rights theorist. But, as mentioned in the Introductory Chapter, Goodin's vulnerability model is compatible with and even useful for a human rights framework. The exercise of one's human rights is dependent on one's vulnerability to others' actions or inactions. If we are concerned with the exercise of human rights, then the vulnerabilities of others ought to matter to us. That is to say, the vulnerabilities of others matter because their human rights matter.

As far as humanitarian defense is concerned, the global community has every reason for past experience to believe that violations of individual rights by states is a frequent and regular occurrence. Any amateur observer of global affairs can attest to this. If the global community chooses not to be prepared for such contingencies, it is failing in its duty. It could be argued that existing institutions and organisations do provide a forum for

organising any required rescue effort. This is certainly correct. As I have argued, the absence of a pre-established institution is not a legitimate excuse for inaction, and in any case present international or regional institutions (e.g., the UN, the OAU, etc.) provide the basic venue for deciding and planing these operations. But one notes the dismal record of such ad hoc arrangements. Member states of these institutions are known for their dithering and reticence over matters that are not perceived to affect their vital strategic interests. Moreover, even with sincerity, the organisation of a humanitarian rescue effort is often a time co..suming and tedious one. Human emergencies ought to be met expeditiously and ought not be subject to tedious consultations each time they arise. As Brian Urquhart notes:

The capacity [of the international community] to deploy credible and effective peace enforcement units, at short notice and at an early stage in a crisis, and with the strength and moral support of the world behind them, would be a major step in the [right] direction.³²

But "[a]t the present time, financial, military, and political obstacles all combine to make such early intervention difficult or impossible."³³ True enough, late intervention is of course better than no interventions. But if early intervention stands to save more lives, and if creating a mechanism would allow for early intervention, then it is a duty to create such a mechanism. Interventions that are poorly coordinated or informally carried out

³² Brian Urquhart, "For a UN Volunteer Military Force," The New York Review of Books Vol XL, No. 11, June 10, 1993, p. 3.

³³ Ibid.

tend to become mired in confusion and disputes over command and control. Note the disastrous outcome of an initially successful intervention in Somalia. The following lesson can be learned from this experience:

Attempted too late, when food has become a weapon in a civil conflict, the relief effort may unleash a new wave of violence as armed and unarmed camps compete for control of relief supplies... Delay also has serious negative impact on the prospect for eventual reconciliation. On the other hand, it may cause the complete collapse of civil society and generate a power vacuum to be filled by warlords or organised bands of thugs, as in Afghanistan, Bosnia, and Somalia ... Dealing with armed, organised and entrenched warlords and thugs makes military intervention much more difficult and risky and complicates the process of political reconciliation later ... On the other hand ... delay will also diminish the willingness of all sides to seek political accommodation, especially if they have been victims of large-scale atrocities ... Early intervention can avoid [the] cycle of retribution before it grows out of control.³⁴

But one can of course ask if the cost of such an arrangement should be a factor. Recall Rawls's point: "at least when this can be done with little cost to ourselves."³⁵ Moral resources are of limited supply and we want to utilise them as cost-effectively as possible. A cost-benefit analysis of such a defense force is beyond the scope of this chapter. But let me point out that studies have shown that "intervening convincingly at an early stage would almost certainly provide, in the long term, for a large reduction in the complication and expense that belated intervention almost

³⁴ Andrew S. Natsios, "Food Through Force: Humanitarian Intervention and U.S. Policy," Washington Quarterly Vol 17, No. 1, Winter 1994, p. 134

³⁵ Rawls, p. 334.

invariably entails."³⁶

Thus my position here is more strategy-based than that of Rawls (a natural duty) or Pogge or Kant (an institutional duty, i.e., a duty out of a sense of justice, to create institutions). It starts from the assumption that we agree that human rights matter and that human rights generate positive duties independent of our casual responsibilities. Some of these duties, however, are more effectively carried out, or can be carried in a timely manner at all, only if these duties are institutionalised. Strategic considerations translate into moral ones. Strategy has moral weight in as far as sound strategy would allow a duty to be carried out at all, or to be carried out with less overall cost. For example, if assigning roles and duties allows greater good to be brought about (or greater harm averted) more efficiently and with less cost, or to be carried out at all, utilitarian consideration would argue that strategic advantages are morally significant. Recall Shue's point:

Efficiency is at least as great a value in the fulfillment of rights ... The more restricted are individual duties -- that is, the less time, energy, money, and so forth each is bound to invest in the fulfillment of rights of others -- the more vital it is that whatever is invested in right fulfillment must be used efficiently for that purpose.³⁷

Effective organising and expedition are not the only ingredients of efficiency. As Shue notes, institutions also provide

³⁶ Urquhart, p. 4.

³⁷ Shue, p. 697.

respite for duty-bearers.³⁸ Overburdened and overtaxed agents are less likely to carry out their duties effectively than if duties were fairly divided and shared out. When duties are not institutionalised, some may be forced to do more than others. There is no formal division of moral labour and thus the more saintly may have to pick up the slack left by the more lackadaisical. Without a formal arrangement for intervention, some states may feel that they tend to be volunteering more than others (e.g., Canada feels that it is unduly taxed as far as peace-keeping operations go).³⁹ Not only is the fairness of overburdening one state a question, but there is also the political worry that such a state may find it increasingly difficult to rationalise to its public its ever increasing commitment to humanitarian defense and thus may find itself unable or unwilling to continuously pick up the loose ends. I am not claiming that formalising this duty is the only way to allocate this task fairly. As I have mentioned, there can be informal arrangements as well which can do the task of mediating duties. But with a formal arrangement, roles are assigned beforehand, making it easier to apportion the duty more fairly. In the haste of an impromptu coordination effort, fairness to duty bearers has to necessarily take second place to the urgent demands of the task at hand. When duties are institutionalised, roles are preassigned, and thus the moral labour is less hastily divided and

³⁸ Shue, pp. 696-697.

³⁹ For example, Canada is keen that more of its peace-keeping costs in, say, the Cyprus, be shared by the international community.

hence more likely to be fairly assigned.

Another advantage of institutionalising duties is that it allows for formal accountability. Goodin writes, "Holding someone responsible entails holding him to account. We are responsible to certain people, and we are responsible for actions and choices that have a particular impact upon certain people."⁴⁰ Accountability is a strong persuasion against inertia. By institutionalising roles and duties of individuals or units, we are able to hold specific individuals or units publicly and formally accountable should they fail in their duty. For example, at the present moment, one does not know who is morally responsible for not abetting the carnage in Bosnia. Indeed, fingers are pointing everywhere. Yet no one in particular can be held formally accountable for this act of omission. Thus institutions allows for more precise and formal accountability. And if fear of public disclosure or reprimand is an incentive to act, then institutionalising duties has moral worth.

II

There is a moral and a practical worry under the current arrangement where intervention is conducted by states voluntarily contributing troops as and when required. The moral worry is that of sending some to die, without their expressed consent, for the sake of others. The practical worry is that states are often reluctant to commit their own soldiers for altruistic causes, as this may be an unpopular domestic decision, and some may even

⁴⁰ Goodin, p. 141.

sincerely feel that is morally incorrect. But if humanitarian defense is formalised and voluntary, that is, if both the public and soldiers know the nature and new limits of their duties, then these concerns are addressed. The moral worry is addressed, as these international soldiers have consented to their special duties. States are also relieved from the burden of making unpopular decisions. Institutionalising humanitarian defense provides the avenue for voluntarism. The volunteer status of the humanitarian defense force is a point stressed by both the United Nations Secretary-General in his report, An Agenda for Peace and in Urquhart's essay. Urquhart notes, "The volunteer status [my emphasis] of such troops should go far to relieve governments of inhibiting concerns about casualties and open-ended commitments that now make them unwilling to commit their national forces to such tasks."⁴¹

DUTY AND INFORMED CONSENT

Normally, in moral philosophy, we regard third-party involvement in disputes, conflicts and the like as an act of intervention. But intervention in international ethics is a special case of third party involvement. In the case of an military intervention to defend human rights, the intervenors are often not the same individuals who have decided to intervene. That is, the agents (e.g., politicians, diplomats) deciding to intervene are not the actual intervenors (soldiers). Thus, some individuals are

⁴¹ Urquhart, p. 4.

apparently being used as a mere means towards a further end. As Kant notes:

For they must be regarded as colegislating members of a state (not merely as means, but also as ends in themselves, and must give their free assent [my emphasis] ... to each particular declaration of war. Only under this limiting condition can a state direct them to serve in a way full of danger to them.⁴²

A Rousseauian may reply in the following way:

He who desires the end desires also the means, and some risks, and even some losses, are inseparable from these means. He who is willing to preserve his life at the expense of others ought also to give it up for them when necessary ... when the prince has said to him: "It is expedient for the state that you should die," he ought to die.⁴³

But this argument (at best) works only when the state's interest is at stake. That is, only in a war of self-defence (or even a war of aggression, if aggression is requisite for the state's survival) can a citizen be assigned the duty to die. In the case of altruistic interventions, the Kantian claim that some are used as mere means if there is no "free assent" is certainly more obvious. While an intervention is not purely altruistic but benefits also the intervening community (e.g., by ceasing the influx of refugees, etc.), it could perhaps be argued that the intervention serves also to benefit the intervening community and hence the intervening soldiers are not being used as a mere means but also treated as ends in that they are also safeguarding their own society, and by implication their own well being. But if an intervention is a

⁴² Kant, Metaphysics, p. 152.

⁴³ Jean-Jacques Rousseau, The Social Contract (Washington Square Press, New York 1974), p. 36.

purely altruistic one, one can rightly ask if it is right that some are sent out without their proper consent to die for others.

Consider our moral position with regard to this in the domestic scene. Most of us agree that person A can rightly assist person B if B is unjustly attacked. If A's acting would entail great risk to A, we may agree that A is not obliged to act, but if A chooses to, it is permissible nonetheless. That is, it is permissible for A to risk her own safety to come to B's help. Supererogatory acts are morally permissible acts. But supererogation, given what it is, namely not a moral duty as such, cannot be morally demanded of others without their consent. Suppose B is unjustly attacked and A wants to assist B. But A delegates C (without C consenting) to rescue B at a high risk to C. It is not clear now if such an act of self-defense on B's behalf is permissible. In fact if A wants to rescue B because A takes human rights seriously, it seems inconsistent for A to commit C to take risks (thereby risking C's loss of human rights).⁴⁴ The problem here is not whether it is permissible to fight off B's assailant. In both cases, self-defense permits the attacking of the assailant. What is questionable here is whether A can justly send C to carry out the defense. As Judith Thomson argues, we may be compelled morally to be "Minimally Decent Samaritans", but "no one is morally

⁴⁴ One possible way to make this not inconsistent is to say that A has special duties to B, thereby it is not inconsistent that A should weigh the human rights of B more than C's. Hence sacrificing C's human rights for B's human rights is consistent. But in the case of intervention, the converse is true. A weighs (or at least ought to weigh, some may even say) the rights of C more than B's.

required to be Good Samaritans or anyway Very Good Samaritans to one another."⁴⁵ That is, while we may be obliged to make reasonable sacrifices to assist others, we are not obliged to risk personal harm to do so. Or as Shue points out, "the duties of ordinary people must be less demanding than the performances of saints and heroes because duty-bearers are themselves right-bearers too and may justifiably choose not to be heroes."⁴⁶

Thus our responsibility to some, namely the oppressed of foreign states, clashes with our responsibility not to sacrifice some merely for the sake of others. This seems like a serious dilemma. If by intervening we enhance the exercise of human rights of others, we sacrifice the rights of some. By not intervening, we do not sacrifice the rights of some but we allow the rights of others to be violated.

It may be pointed out that there are individuals who have freely consented to be soldiers (if we could leave aside the problem of the "social conscript"). That is to say that they have consented to a high-risk profession, and thus it is not unreasonable to say that they have a moral duty to intervene to defend the rights of others even if the risks involved are high. Well, it is true that there are individuals who are soldiers by profession and assent. But while their expressed duty is to their respective states, it is morally questionable whether they could be

⁴⁵ Judith Jarvis Thomson, "A Defense of Abortion," Vice and Virtue in Everyday Life, ed. Christina Hoff Sommers (Harcourt, New York 1985), p. 586.

⁴⁶ Shue, p. 697.

used for altruistic interventions. I have argued that intervention becomes a duty only in extreme cases but it is problematic to demand even professional soldiers to defend small scale human rights violations (assuming that it is certain that some deaths would result) if these soldiers are soldiers of a state rather than of humanity. If the understanding of these individuals upon taking up the profession as soldiers is that they are to insure the peace and security of their respective states, then demanding them to do more is to cease treating them as ends at all.

But recall that I argued that the moral demands of others may exert a strong enough moral pull on us that we are compelled to sacrifice even our basic right to security for others. We ought not treat others as mere means, but to count this as an inviolable principle no matter what the consequences are is a moral point of view most of us would find hard to accept and abide by. As I mentioned, the kind of moral principles we want to enforce must be principles we can be reasonably expected to live up to. We would have to accept a world wherein we would allow others, who are capable of ending the massacre, to stand by while hundreds of thousands are being slaughtered because of our special duty to them. Such a world would be, to re-use Michael Walzer's phrase, "literally unbearable". If the numbers involved are high enough or if the nature of the violations being committed is that of genocide, politicide, etc., then the demands of the situation can morally compel us to act even if acting entails a large sacrifice.

Thus, under "extraordinary circumstances", intervention is

obligatory even if it entails the sacrifice of some. But I am left with "extraordinary cases" and I concede that this is a rather weak conclusion, a conclusion that may not satisfy many of us who are ardent human rights defenders.⁴⁷ Most of us would consider that all systematic human rights violations, even if they are not in the realm of "extraordinary" are intolerable nonetheless. Extreme cases are not the only cases of moral concern. In the event that a "supreme emergency" (to borrow Walzer's term) does crop up, one may wonder if enough damage has not been done by the time we arrived at this stage.

Thus, because we would tend to consider all systematic human rights violations as intolerable, we would tend to feel that we have a moral responsibility to counter these violations; and some of these instances may involve the use of armed intervention. Yet we have the moral responsibility not to commit some to take high risk for the sake of others, that is, to be Very Good Samaritans. Without consent, the risks one can be morally asked to take cannot be too significant. What is morally significant is of course not shared by consensus. But most of us would count chancing the sacrifice of one's life or security a morally significant risk. The only way of resolving this dilemma is if we have individuals consenting to adopt the role of the Samaritan. Consent raises the level of acceptable risk an individual might take when performing a duty. In fact, consent determines the level of this risk. One could consent to risk one's limbs, or one could consent to risk

⁴⁷ See Chapter III.

one's life. With expressed consent, one can be morally asked to act (but only within the stipulated means naturally).

Thus my weak conclusion of Chapter III (that only some permissible interventions are obligatory) would be strengthened if there were individuals who have freely assented to be soldiers of human rights. All interventions that are permissible are in this case also obligatory. The gap within which intervention is permissible but not obligatory is closed because the reasons for this gap no longer apply. Recall that it is the special responsibility of a state to its own members that raised the threshold for obligatory intervention thus resulting in this gap. To cite Walzer's point again:

[Leaders of a sovereign] state are not required to calculate as if every human life carried the same moral weight ... at every moment in time. Their people's lives are not international resources [my emphasis] to be distributed in war so as to balance the risks or reduce the losses of other people.⁴⁸

But with individuals specially consenting to be soldiers of the world, the problems of conflicting moral responsibilities is resolved. The tenacious problems of a state's special duty and priority to its own members will no longer be relevant. Whenever human rights are abused and acting to correct them would not result in more harm, and that intervening is approved both by the oppressed and the international community, then an international human rights defense force, staffed by volunteers, is morally

⁴⁸ Michael Walzer, Just and Unjust Wars (Basic Books, New York 1992) p. 237.

obliged to act.⁴⁹

Having volunteers in an international humanitarian defense force would thus also ease a practical worry. States would be relieved of explaining to their citizens why they are being risked for others. Under the present arrangement, states are reluctant to commit their troops because such a move may prove politically unpopular. The public may feel that the state, by committing some of "their own" for the sake of foreigners, is reneging on its obligations to the community.⁵⁰ Having volunteers to act relieves the state of its dual responsibility and hence of its worry of making unpopular decisions vis-à-vis intervening. A major reason for tardy intervention or half-hearted commitments to defend human rights is thus overcome. The intervenors can now be considered, in the eyes of the public, as "international resources" and not solely "state resources" to be used only when the interest of the state is at stake.

What if there are no volunteers for the job? Urquhart claims that there "can be little doubt that there would be more than

⁴⁹ It may appear odd to some that moral duties can be voluntarily assented to. But this is not a strange notion. We say that doctors, politicians, etc., have certain moral obligations because of their offices, even if these offices were voluntarily acquired. The point to remember is that not all moral duties are voluntary, but only some can be. Choosing high-risks occupation is an example of consenting to certain moral obligations, the carrying out of which for others may entail being Good Samaritans and hence not obligatory.

⁵⁰ Note the "lukewarm" response by individual states to the United Nations' "urgent appeal" for more troops for peace-keeping in Bosnia. See "U.N. seeks More Troops to Keep the Peace in Bosnia," The New York Times March 4 1994, A3.

enough volunteers from around the world for an elite peace force of this kind."⁵¹ But suppose this is a false claim. Are we then in a position to coerce or conscript some individuals to carry out the task of intervening in small scale violation of human rights? I would say we are not. Such a principle, it seems to me, cannot be universalised (in the Kantian sense). Reasonable and rational individuals would find it hard to accept a principle whereby they could be sacrificed for the sake of others in small scale cases. This would be a classic case of being used as a means only. Our moral scheme need not be upset when one is given the preference to act or not to act when the risks are high and the demands of the case not "extreme". This is consistent with Thomson's point that we cannot be demanded to be "Good Samaritans". Thus, should there be a lack of volunteers, the duty of intervening applies only to extreme cases, which is the conclusion of Chapter III. This is in fact, given that there is no voluntary arrangement presently, all we can argue for at the moment. It would be difficult, for example, to say that the international community has the duty to militarily intervene in Tibet or Guatemala (assuming that such interventions would be permissible in the first place) given the confined or "small-scale" nature of these cases and the high cost of military ventures. But this does not mean that we are thus let off the hook. We are still required to be "Minimally Decent Samaritans"; that is, we are morally required to do as much as we can without significant risks to ourselves (e.g., applying non-military measures, like

⁵¹ Urquhart, p.3.

economic sanctions, political pressures and the like).⁵²

It may be pointed out that we do, however, conscript individuals in society to provide security. For instance some societies conscript police officers, and even soldiers. However, this is permissible as these individuals are not merely used as a means here. In as far as they are forced to provide security for their own societies, they are not used merely for the sake of others. Indeed, a social contractarian like Rousseau would say that individuals of a society by implication have consented to such collective tasks. This argument, however, cannot apply globally. The inferences of a global social contract argument would be too tenuous to be of any force.

The vein of the argument in Section II thus differs from that of Section I. In Section I, it is the duty to intervene that translates into an immediate duty to create institutions. In Section II, however, it is the creation of voluntary institutions that brings to fore an obligation by resolving conflicting responsibilities. Having consenting individuals to do that which would otherwise be done only by Very Good Samaritans allows us to demand action which we could not otherwise demand. So while in the absence of consenters there can be no duty in a circumstance C (where C is not an "extraordinary case" of human rights violation, but one in which intervention is permissible nonetheless), with consenters there is a duty in the same circumstance C. Those who have consented to take risks to defend the rights of others are not

⁵² Thomson, p. 586.

being Good Samaritans (in the sense that they are doing is more than morally required and hence they cannot be demanded to act) when they act, but simply fulfilling their contractual obligation. They have agreed to take on a role which entails certain risks. Perhaps they are being Good Samaritans in the first place for volunteering to take up the job, or perhaps they are just being highly paid; whichever is the case upon assuming and maintaining the role of human rights protectors, acting to protect human rights is now a duty demandable of them, and of them only.

Let me sum up the arguments in this chapter. For the sake of efficiency, there is a need to institutionalise humanitarian intervention. Institutionalising a duty would formally define the roles and responsibilities of all concerned. As Rawls notes: "The publicity of the rules of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of actions are permissible"(p. 56). Intervention at an early stage, which is morally preferable to a late intervention, can be carried out if the international community need not be unduly tied up in an informal cooperative scheme each time there is a major crisis brewing.

Formalising intervention would also provide an avenue for informed consent on the part of the actors. Presently the duty of a national soldier to engage in an altruistic intervention is open to dispute. Traditionally, we regard the duty of the soldier as primarily that of protecting her national security. Humanitarian intervention is a relatively new concept and its status vis-à-vis

the contemporary soldier is ambiguous. With an international mechanism for carrying out humanitarian defense, individuals can be recruited specifically for this task. There would be no ambiguities with regard to the functions of these soldiers, and there would be no conflict between the responsibilities of the soldiers to their state (and of the state to its soldiers) with the responsibilities we have to defend human rights. The duty of these international soldiers would be foremost to those whose rights are being violated. Also these soldiers would not be said to be owed special privileges (as soldiers) by any particular state and hence ought not to be committed to intervene for the sake of others.

One may wonder if the creation of an international military force may become abusive in the wrong hands. But with proper international supervision and leadership this is a problem that is preventable. Many just institutions are open to abuses. But rather than shying away from these institutions, we ought to install safeguards against abuses. We all have a moral duty to remain vigilant in this regard.

CONCLUDING REMARKS

In Chapter II, I argued that the principle of non-intervention is not absolute. The moral arguments supporting the principle is shown to allow intervention under certain conditions. The arguments concerning the permissibility of intervention are neither new nor very unusual. But in rehearsing them, I am able to survey the work which has been done in this aspect and to explicate my own position

on the matter. But more importantly, I also am able to flesh out the fundamental principles that were to provide the starting points for Chapter III.

The just war tradition, as I mentioned, has said precious little on whether an intervention could be a moral duty. Indeed the international community presently behaves as if it were not. I thus examined how we could feel and think this way and still not feel that we are being inconsistent with our beliefs about human rights. I noted two common objections against intervening as a duty, and showed that one objection, namely the unallocated duty-bearer objection, although posing a practical concern is not a moral issue, but a question of strategy. And perhaps this problem is better left to strategists and politicians. The second objection, that of a state's right to remain neutral, is a more worrisome one. However, I argued that this right, like any right to sovereignty, can be overridden when certain conditions obtained. Unlike the right not to be interfered with, the right not to get involved requires stronger extenuating circumstances before it can be overridden. That is to say, under "extreme" circumstances, the international community has a duty to intervene militarily, if the use of military force is the last resort. The present case in Bosnia-Hercegovina is one real life example of such a situation.

Chapter IV took the question of an obligation to do an act a step further and asked if there is also an obligation to establish permanent arrangements to facilitate this act. The thrust of the argument is that if having a permanent arrangement is necessary to

allow a moral duty to be carried at all, or even if it simply increases the efficiency of the moral agents, creating this arrangement is a moral duty. The creation of voluntary institutions introduces an interesting factor to our discussion. Voluntary informed consent raises the risk level that may be expected of any moral agent. So while in the absence of consenters there can be no duty in a circumstance C (where C is not an "extraordinary case" of human rights violation, but one in which intervention is permissible nonetheless), with consenters there can be a duty in the same circumstance C. Creating a permanent humanitarian defense force strengthens my weak conclusion of Chapter III. A permanent arrangement would provide the avenue for voluntary informed consent and thus any permissible intervention would from now on be obligatory on the part of this defense force. While it is not a moral duty for anyone to volunteer to become a human rights warrior, it is only hoped that there would be enough volunteers for such a role, whether out of virtue or avarice. The exact implementation of such an organization is best left to strategists and other experts.

Pogge, in the concluding section of his essay on intervention, notes:

In the faces of abuses and deprivations that are widespread and pervasive, we tend to focus too much on the question whether humanitarian intervention in this or that concrete situation is permissible (or even obligatory), and too little on the question how we might intervene at the level of institutional design.⁵³

⁵³ Pogge, p. 100.

This point cannot be over stressed. As I mentioned in the opening chapter, humanitarian intervention should not be regarded as the only solution, or even a solution, to problems of human rights abuses and other problems of global injustices. Intervention deals only with the symptoms of institutionalised global injustices, injustices of which many of us here are beneficiaries. We therefore have the ponderous burden of instigating global institutional reforms. Only when there is greater global economic justice, when weaker states are not as easily coerced by big states as they are now, when small nations too will have an effective and not just a formal voice in international forums can we hope that intervention, which is certainly an unpleasant means of mitigating injustices, will cease to be an issue of such importance.

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